

FILED

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISIONJUN 30 2008 *new*
JUN 30 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

United States of America ex rel.

JAN NEWELL - K-50566

(Full name and prison number)

(Include name under which convicted)

PETITIONER

vs.

WARDEN NEDRA CHANDLER(Warden, Superintendent, or authorized
person having custody of petitioner)

RESPONDENT, and

(Fill in the following blank only if judgment
attacked imposes a sentence to commence
in the future)

ATTORNEY GENERAL OF THE STATE OF

(State where judgment entered)

08CV3711

JUDGE DARRAH

MAGISTRATE JUDGE BROWN

Case Number of State Court Conviction:

93-CR-19978

PETITION FOR WRIT OF HABEAS CORPUS - PERSON IN STATE CUSTODY

1. Name and location of court where conviction entered: COOK COUNTY CIRCUIT COURT, COOK COUNTY, IL., 2650 S. CALIFORNIA, CHICAGO, IL 60608
2. Date of judgment of conviction: OCTOBER 22, 1996
3. Offense(s) of which petitioner was convicted (list all counts with indictment numbers, if known)
1ST DEGREE MURDER - CH.38-9-1-A(1)
4. Sentence(s) imposed: 40 YRS
5. What was your plea? (Check one)
(A) Not guilty (☒)
(B) Guilty (☐)
(C) Nolo contendere (☐)

If you pleaded guilty to one count or indictment and not guilty to another count or indictment, give details:

PART I - TRIAL AND DIRECT REVIEW

1. Kind of trial: (Check one): Jury () Judge only (☒)
2. Did you testify at trial? YES (☒) NO ()
3. Did you appeal from the conviction or the sentence imposed? YES (☒) NO ()

(A) If you appealed, give the

(1) Name of court: APPELLATE COURT OF ILLINOIS - FIRST DISTRICT(2) Result: AFFIRMED(3) Date of ruling: JULY 25, 1997 (APPEAL NO. 1-96-4328)(4) Issues raised: EXCESSIVE SENTENCE I.E. THAT SENTENCE WAS AN ABUSE OF DISCRETION BASED ON 40 YR. SENTENCE FOR 54 YR OLDMAN WHO WAS PARALYZED CHEST DOWN, PARTIALLY PARALYZED LEFT ARM/HAND AS A RESULT OF THESE EVENTS BEING CONSIDERED

(B) If you did not appeal, explain briefly why not:

(SEE ATTACHED)

4. Did you appeal, or seek leave to appeal, to the highest state court? YES (☒) NO ()

(A) If yes, give the

(1) Result: DENIED LEAVE TO APPEAL(2) Date of ruling: DEC. 3, 1997(3) Issues raised: EXCESSIVE SENTENCE I.E. THAT SENTENCE WAS ANABUSE OF DISCRETION (SEE ATTACHED)

(B) If no, why not: _____

5. Did you petition the United States Supreme Court for a writ of certiorari? Yes () No (☒)

If yes, give (A) date of petition: _____ (B) date certiorari was denied: _____

CASE HISTORY (Con't)

only the issue of excessive sentence was addressed, none from Pro Se brf.

10. N/A

11. Yes, other applications, petitions were filed regarding restraint.

12. An application was made to the Illinois Supreme Court.

DENIED WITHOUT COMMENT-- December 3, 1997

Issues raised:

a. 40 year sentence constituted abuse of discretion. Defendant is 54 years old and is paralyzed from the chest down and suffers severe nerve damage to left arm/hand as a result of the events being considered.

b. Ineffective assistance of trial counsel for:

- (1) failure to call eyewitnesses on defendant's behalf,
- (2) failure to investigate and use 911 tapes to establish time element of fight and shooting,
- (3) failure to produce and use an eyewitness to testify to a shorter time frame than the one assumed by judge,
- (4) failure to raise an intoxication defense,
- (5) failure to present lost eyeglasses as an issue,

c. Ineffective assistance of appellate counsel (Ass't. Public Defender T. Shanker) for not raising the supplemental issues.

d. Appellate court was in error for not addressing the supplemental issues.

Other motions, petitions, requests filed or given notice of,

a. Motion for transcripts and common law records--

Denied April 22, 1997,

b. Letter to State Appellate Defender Office protesting the handling of my case by the Asst. Public Defender George Nichols (Ineffectiveness of Counsel) --

November 20, 1996,

c. Letter to Deputy Defender, M.J. Pelletier, requesting police reports, transcripts, postmortem, etc. before briefs are filed. -- April 22, 1997,

d. Letter to Forensic Clinical Services, Dr. Stipes, requesting notes, reports and documents pertaining to my case to review for appeal. -- April 22, 1997,

DIR. APPL.
ISSUES
ON PLA TO
SUP. CT.

ON DIR. APPEAL
& NO CRIMINAL
RECORD (I THINK)
NOT SURE

PART II - COLLATERAL PROCEEDINGS

1. With respect to this conviction or sentence, have you filed a post-conviction petition in state court?

YES (✓) NO ()

With respect to *each* post-conviction petition give the following information (use additional sheets if necessary):

A. Name of court: COOK COUNTY CIRCUIT COURT

B. Date of filing: MAY 30, 1998

C. Issues raised: - SEE POST-CONVICTION ISSUES (ATTACHED)

D. Did you receive an evidentiary hearing on your petition? YES () NO (✓)

E. What was the court's ruling? DENIED AS FRIVOLOUS/PATENTLY WITHOUT MERIT

F. Date of court's ruling: JUNE 29, 1998

G. Did you appeal from the ruling on your petition? YES (✓) NO ()

H. (a) If yes, (1) what was the result? AFFIRMED

(2) date of decision: JULY 6, 2000

(b) If no, explain briefly why not: _____

NOTE: APPELLATE COUNSEL
ONLY RAISED ONE (1)
ISSUE - SEE ATTACHED

(THIS WAS INEFFECTIVE
ASSISTANCE OF APPELLATE
COUNSEL)

I. Did you appeal, or seek leave to appeal this decision to the highest state court?

YES (✓) NO ()

(a) If yes, (1) what was the result? LEAVE TO APPEAL DENIED

(2) date of decision: JUNE 29, 2001

(b) If no, explain briefly why not: _____

(ISSUE RAISED WAS SAME
AS APPELLATE ISSUE.)

NOTE: ALSO FILED AFTER APPELLATE COURTS AFFIRMATION:

1) MOTION FOR REHEARING - DENIED - AUG. 16, 2000

2) MOTION TO FILE SUPPLEMENTAL BRIEF - DENIED - SEPT. 28, 2000

3) MOTION TO RECONSIDER - DENIED - OCTOBER 12, 2000

POST-CONVICTION ISSUES

IN THE
CIRCUIT COURT OF COOK COUNTY
COOK JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,)	
Plaintiff-Respondent)	
)	
v.)	NO. 93-CR-19978
)	
JAN NEWELL,)	
Defendant-Petitioner.)	

PETITION FOR POST-CONVICTION RELIEF

Now comes, Jan Newell, petitioner, pro se, and respectfully requests that the Court grant him relief, pursuant to 725 ILCS 5/122-1 et seq. Petitioner states as follows:

BACKGROUND OF CASE

1. On July 28, 1993, petitioner was involved in a shooting, and although shot himself, he was charged with murder.

2. On September 24, 1993, petitioner was assigned Public Defender, George Nichols.

3. On October 22, 1993, petitioner was arraigned and pled not guilty.

4. Shortly thereafter attorney Nichols came to the Oak Forest Hospital, to get petitioner's version of what happened. Petitioner told Mr. Nichols, he could not remember the events of the morning of July 28, 1993.

5. Mr. Nichols agreed to investigate the event.

6. On October 26, 1995, Judge Erickson ordered a fitness evaluation, at defense counsel's request.

7. On June 3, 1996, a hearing was held and petitioner was found fit to stand trial, with medication.

8. On September 20, 1996, petitioner proceeded to a bench trial in front of Judge Erickson and was found guilty of First Degree Murder.

9. On October 22, 1996, petitioner was sentenced to 40 years, in the Department of Corrections.

10. Petitioner appealed, and on July 25, 1997, his conviction was affirmed by the Illinois Appellate Court.

11. Petitioner requested leave to Appeal to the Illinois Supreme Court, which was denied on December 3, 1997.

FIRST ISSUE

12. Whether petitioner received a **full and fair** fitness hearing, due to defense counsel's failure to supply Court with information of petitioner's amnesia, physical and mental condition and synergistic affect of medication. (Hearing consisted of fitness evaluation report being read by the psychiatrist)

RELATED FACTS

13. On September 24, 1993, Mr Nichols, Assistant Public Defender, was appointed to defend petitioner, Jan Newell.

14. Mr. Nichols agreed to investigate the shooting that took place on July 28, 1993, involving petitioner, due to petitioner's inability to remember the events that took place that morning.

15. Petitioner had been hospitalized from September 24, 1993 up to and through petitioner's fitness hearing, on June 3, 1996, (almost 3 years).

15-a. S.H.A. 725 ILCS 5/104 21(a)(b) Require a **Full, Formal** hearing ; U.S.C.A. Const. Amend. 6, when medications are taken during trial and sentencing, and this is known by the court.

16. Petitioners physical state: T-5 (chest down paralysis) with loss of bladder, bowel control and severe nerve damage to left arm/ hand with severe back pain, spasms and constant medication. **(Exhibit- 1)**

17. During petitioners hospital stay (pre-trial, trial, sentencing) his mental state was retrograde amnesia, while taking Valium, Elavil, Dantrium, Baclofin, Robaxin, Coumadin and Tylenol-3.

18. Mr. Nichols knew or should have known petitioner's exact mental and physical state, having access to his medical records.

19. Mr. Nichols knew or should have known that memory loss alone could be crucial for construction/presentation of a defense thus providing the necessary framework for a fair trial.

20. Mr. Nichols, after requesting a fitness evaluation allowed an inadequate hearing, by standing silent to the above known facts and to the synergistic effects of combined medication, creating a sedated and unemotional state of response effecting petitioner.

21. Mr. Nichols called no witnesses, introduced any expert or medical opinion, on behalf of petitioner, or evidence of amnesia.

22. The Court must determine, when faced with amnesia, that sufficient facts were **disclosed** to to petitioner through other available sources of information, to enable him a fair trial.

SECOND ISSUE

23. Whether petitioner's jury waiver was **knowingly** and **voluntarily** made, when defense counsel promised petitioner that

a bench trial would produce Second Degree Murder conviction, and 10-15 year sentence. That a decision of waiver of jury trial must be made with a understanding of the evidence, facts and defenses available.

RELATED FACTS

24. Prior to trial Mr. Nichols told petitioner, he talked to a Brian McInterf, and that he would testify in support of the sudden and intense passion requirement for Second Degree Murder.

25. On the day of the trial, Mr. Nichols told petitioner, that he talked to the State's Attorney and that he agreed, if petitioner took a bench trial, the State would not rebut the sudden and intense passion testimony of Brian McInterf, allowing the mitigating factor to support Second Degree Murder.

26. Prior to trial Mr. Nichols talked to Mary Jane Knabosch, and Norman Knabosch, by phone and told them that he had reached an agreement with the State, that there would be a bench trial with the mitigating factor of sudden and intense passion being un rebutted by the State (~~Exhibits- 2-4~~)

THIRD ISSUE

27. Whether defense counsel was ineffective for refusing and/or supressing police reports, medical records, and witnesses statements.

RELATED FACTS

28. Petitioner continuously requested, of Mr. Nichols, to see the police reports, medical records, and witness statements and Mr. Nichols told petitioner that the Judge said petitioner did not

have constitutional right to copies of said records.

29. Petitioner's sister made the same request, and was told the samething. An affidavit could be obtained.

29. Petitioner required these documents, in order that he could reconstruct the events that took place on July 28, 1993, and insure that he was receiving a full and fair hearing of all the facts and witness testimony, to be presented at his trial, due to his medical state of amnesia and being heavily medicated.

FOURTH ISSUE

30. Whether defense counsel was ineffective for failure to impeach State's witnesses with physical evidence and expose State's known use of false testimony.

RELATED FACTS

31. On September 20, 1996, Stan Weliczko, was called as a witness on behalf of the State.

32. On direct examination, by the State, Mr. Weliczko testified ^{Tr.} (page A42 - line 14-16) "when he came up - came walking through the snow fence and walked up to Tony and pulled a gun out and shot him."

33. In a pretrial statement, made to and signed by the State, Mr. Weliczko states, "he heard a gun shot, looked up and saw the Hispanic guy fall down and the guy with brown glasses and shorts, with a gun in his hand in front of the Hispanic male." (^{Tr.} Exhibits 5-8)

34. Mr. Nichols started to impeach Mr. Weliczko (page A50 - line 14-24) and suddenly stopped, allowing witness's false testimony to stand!!

() ()

35. Mr. Jeff Adams also testified on behalf of the State. His testimony was somewhat suspect due to his selective memory, however, Mr. Adams testimony was/is in direct conflict with the physical evidence:

(a) When the State asked what he (defendant) was doing, Mr. Adams answered, " Just standing toe to toe with him basically. **Tr.** Were they face to face? Yes." (page A 11 - lines 15-17)

(b) When asked how far apart they were, Mr. Adams testified " Oh maybe three " (indicating feet) (Mr. Weliczko testified to a distance of: " I'd say three, four **Tr.** feet" (page A44 - line 9)

(c) When asked how he shot him, Mr. Adams testified that: **Tr.** " The defendant shot him in the chest point blank." (page A13 -line 6)

PHYSICAL EVIDENCE

The following physical evidence listed on the police reports was not entered into evidence by the State or by Mr. Nichols, thus preventing effective cross-examination of the State witnesses. The opportunity of impeachment was severely compromised.

(1) Gunshot residue analysis of both victim and the defendant did not indicate that either had fired a weapon, the results were without an opinion. (Exhibit 9,10)

(2) No testing for GSR or powder burns on the victim was indicated.

(3) Two guns were recovered from the crime scene but only one was pictured as evidence. Both were inventoried. The second gun was not listed as evidence. Why not?

Weapon I - A Smith & Wesson, 5 shot revolver,
(Exhibits 11-14) 2 inch barrel, blue steel, no serial number

Weapon II - A Iver-Johnson, 5 shot revolver,
(Exhibit 15) chrome, 1½ inch barrel, serial no. 19938

(4) The bullet that killed the victim could not be positively identified with either weapon. **(Exhibits 16,17)**

(5) No fingerprint evidence was found relating defendant or victim to either weapon. Detective Bernatek also relates a conflicting report **(Exhibit 18)**

(6) Both victim and defendant are 5' 9" yet the trajectory of the bullet was sharply upward path. The bullet went from 20 inches from the top of the head to lodge 14 inches from the top of the head and from 4 inches to the right of the midline to 4 inches to the left of the midline, indicating a sharply sideways path, showing the person was turned and facing away from the defendant, or that **someone, other than the defendant** shot the victim from the side. Another person was seen shooting at the defendant, other than the one mentioned at trial. This was never investigated by Mr. Nichols **(Exhibits 19-22) (the bullet passed thru soft tissue, thus there was no deflection)**

The indications of upwards/sideways bullet path was left out of the trial stipulation of Dr. Lifschultz. This denied valuable cross examination evidence. The Judge was left with an inaccurate picture of the shooting. This caused **severe** prejudice.

(Exhibits 23-25)
25-A, 31,32

7/1-

(7) The police reports show that Mr. Adams said that the gun was in my right hand, making the bullet path even more important as to how the victim was facing (**Exhibit 26**)

36. Mr. George Miller also testified for the State, that the victim was " not much more than an arm's length away " (page A57 - **Tr.** line 8).

37. The Judge had no choice but to convict the petitioner of First Degree Murder, based on the testimony of these witnesses, who should have been impeached, if the defense counsel had not been guilty of ineffective assistance of counsel. It seems that counsel acted outside of the range of minimum need of help to his client which is required.

FIFTH ISSUE

Whether defense counsel was ineffective based on cumulative errors.

RELATED FACTS

Counsel failed to:

(a) Investigate, interview witnesses, and otherwise prepare an ADEQUATE DEFENSE. (Such as an intoxication defense, where drunkenness may contribute to sudden and intense passion or mistaken self defense)
(**Exhibits 27-29**)

(b) Supply police reports, medical record and witness depositions/ statements to the petitioner, who needed this information to help stimulate his memory, due to his amnesia;

(c) Investigate victim's background for evidence of criminal history, aggressiveness, violent character, and propensity to carry a gun. (Two guns were recovered from the crime scene);

(d) Failed to investigate where the second gun went to, whose gun it was and why wasn't it tested for possibility of being the murder weapon;

(e) Protecting petitioner's constitutional right to a jury trial by coercing him into having a bench trial on the false promise that the State had agreed to conviction of only Second Degree Murder;

(f) Begin trial with a proper foundation or direction to any particular defense strategy. Counselor's only defense was a group of random unsupported statements in his closing arguments.
Tr.
(pageA30 - line 13 thru pageA31 - line 6);

(g) Expose State's known use of false testimony;

(h) Impeach the State's witnesses based on expert testimony and the physical evidence which directly contradicted the witness testimony;

(i) Depose State's witnesses before the trial for the possibility of impeaching their testimony or at least knowing what their testimony was going to be.

(j) Argue and investigate victim's conviction of battery, with a sentence of 18 Mos. probation. This is important to determine who the aggressor was in the second fight.

**POST-CONVICTION
ON APPEAL
& PLA TO SUP. CT.**

No. 98-2920

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County, Illinois.
Respondent-Appellee,)	
)	
-vs-)	Indictment No. 93 CR 19978.
)	
JAN NEWELL,)	Honorable
)	David Erickson,
Petitioner-Appellant.)	Judge Presiding.

REPLY BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

I. THE COURT ERRED IN DISMISSING JAN NEWELL'S POST-CONVICTION PETITION AS FRIVOLOUS AND PATENTLY WITHOUT MERIT WHERE MR. NEWELL ESTABLISHED THE GIST OF A MERITORIOUS CLAIM BY ALLEGING THAT HIS WAIVER OF RIGHT TO JURY WAS INVOLUNTARY BECAUSE HIS ATTORNEY FALSELY PROMISED HIM THAT HE WOULD BE CONVICTED OF SECOND DEGREE MURDER IF HE WAIVED THE JURY.

The State first contends that this issue is waived. (State's Brief at 8) Because the defendant filed a *pro-se* brief on appeal, the State contends, the defendant could have included this issue in that brief. (State's Brief at 8) The State's does not cite any caselaw to support this position, and, in fact, caselaw is quite clear that direct appeals are limited to those issues that are supported by the record. *People v. McCarroll*, 10 Ill. App. 3d 249, 294 N.E.2d 52 (1st Dist

2. With respect to this conviction or sentence, have you filed a petition in a **state court** using any other form of post-conviction procedure, such as *coram nobis* or habeas corpus? YES (☒) NO (☐)

A. If yes, give the following information with respect to each proceeding (use separate sheets if necessary):

- | | | |
|--|---|------------------------------|
| 1. Nature of proceeding | <u>RELIEF FROM FINAL JUDGEMENT - 5/2-1401</u> | |
| 2. Date petition filed | <u>OCT. 21, 1998</u> | |
| 3. Ruling on the petition | <u>DENIED AS "WITHOUT MERIT"</u> | <u>SEE ISSUES (ATTACHED)</u> |
| 4. Date of ruling | <u>JUNE 30, 2005</u> | <u>ALSO ISSUES ON APPEAL</u> |
| 5. If you appealed, what was the ruling on appeal? | <u>AFFIRMED</u> | <u>& PLA</u> |
| 6. Date of ruling on appeal | <u>MAY 1, 2007</u> | |
| 7. If there was a further appeal, what was the ruling? | <u>PLA TO ILL. SUP. CT. - DENIED</u> | |
| 8. Date of ruling on appeal | <u>SEPT. 26, 2007</u> | |

3. With respect to this conviction or sentence, have you filed a previous petition for habeas corpus in **federal court**? YES (☐) NO (☒)

A. If yes, give name of court, case title and case number: _____

B. Did the court rule on your petition? If so, state

(1) Ruling: _____

(2) Date: _____

4. With respect to this conviction or sentence, are there legal proceedings pending in any court, other than this petition? YES (☐) NO (☒)

If yes, explain: _____

ATTACHED

SEE: 1) 2-1401 ISSUES

2) " " ON APPEAL

3) " " ON PLA TO ILL. SUP. CT.

2-1401 - 155465

2-1401. (PCSupp3. 2-81.) In his 2-1401 petition, Newell alleged, *inter alia*: 1) he did not receive a full and fair fitness hearing due to counsel's failure to supply the court with information regarding the defendant's amnesia and mental condition due to medication; 2) he did not knowingly and voluntarily waive his right to a jury trial where counsel promised the petitioner that a bench trial would result in a second degree murder conviction and a 10-15 year sentence, that a witness, Brian McInterf, would testify to the sudden and intense passion requirement, and that the State agreed not to rebut McInterf's testimony if the defendant took a bench trial; 3) ineffective assistance of counsel for refusing or suppressing police reports, medical records, and witness statements from the petitioner; 4) ineffective assistance of counsel for failing to use physical evidence to impeach witnesses or expose perjury; 5) "cumulative" errors, including counsel's failure to investigate an intoxication defense or other defenses, counsel's false promise of a second degree murder conviction, counsel's failure to impeach with expert and physical evidence; 6) the use of perjured testimony; 7) suppression of discovery materials and scientific and physical evidence from the defendant; 8) the denial of possible defenses or mitigation based on diminished capacity or intoxication, and the denial of crucial evidence accounting for memory loss, including a possible black out; 9) the failure to present various theories of self defense, including testimony by a witness identified in police reports; and 10) ineffective assistance of appellate counsel. (PCSupp3. 2-81.)

The circuit court, apparently believing that it lacked jurisdiction to rule on the 2-1401 petition while the appeal on Newell's post-conviction petition was pending, took the 2-1401 petition "off call," but did not actually dismiss the petition. (PC. 56-59.) Following the court's ruling, Newell filed a motion for leave to amend the 2-1401 petition, arguing, *inter alia*, that he had been denied access to evidence, was prevented

MORE DETAINED 2-1401 ISSUES

7. On June 3, 1996, a hearing was held and petitioner was found fit to stand trial , with medication.

8. On September 20, 1996, petitioner proceeded to a bench trial in front of Judge Erickson and was found guilty of First Degree Murder. On September 25, 1996

9. On October 22, 1996, petitioner was sentenced to 40 years, in the Department of Corrections.

10. Petitioner appealed, and on July 25, 1997, his conviction was affirmed by the Illinois Appellate Court.

11. Petitioner requested Leave to Appeal to the Illinois Supreme Court, which was denied on December 3, 1997.

SUPPLEMENTAL ISSUES

1. That perjured testimony was used at trial to obtain the conviction;

2. That all discovery evidence was suppressed from petitioner from pre-trial thru direct appeal as a result of counsel ineffectiveness, prosecution non-disclosure (Brady v. Maryland violation) or unavailability (new evidence);

3. That petitioner and petitioner's family continued to request these materials before trial from counsel;

4. That material evidence was of a scientific and physical nature as per 725 ILCS 5/115-5.1 and are prima facie, was never presented to the court, and with the result that had this been done, the judge's decision would probably have been different all to the prejudice to the defendant;

5. That petitioner obtained a copy of these materials contained in police reports and discovery in August ,1997, after the appeal had been affirmed and thus this evidence was not of record.

6. That without this evidence being introduced the Judge was left to believe the State's version consisting entirely of witness testimony. The State produced no physical evidence in support of it's case; as to weapon to fatal bullet, defendant to crime, etc.

7. That the three witnesses who claimed to have witnessed the actual shooting: Jeff Adams-- his testimony (does not reflect the actual postmortem forensic evidence) of toe to toe, face to face (EXHIBIT - E-23,31,32) (Tr. A-11); Stan Weliczko-- who ,it can be shown, testified to information opposite to his previous statement, thus committing perjury, George Miller-- his testimony that the victim was facing defendant, when shot, is also, not reflective of the post-mortem evidence which was never before the court (Tr. A-57, line 7,8) (EXHIBIT E-23,31,32)

8. That petitioner was denied possible defenses or mitigation because facts were not produced at trial concerning petitioner's mental state. A. Diminished capacity /Intoxication-- Hospital Records:

Christ Hospital-- " upon arrival, the patient was intoxicated and somewhat confused". " Blood alcohol level was 213 mg/dl. Tox screen was positive for amphetamines". (petitioner will swear, under penalty of perjury, that he has never VOLUNTARILY taken amphetamines) (EXHIBIT E-27,28,29,

This level was ascertained at the emergency room shortly after the incident and after losing a large amount of blood and receiving diluting IV'S (EXHIBIT E-33). A blood alcohol of 213 mg/dl is also expressed as .213 BAC which a psychological expert could have testified that the level of mental impairment was extreme. This level is almost three (3) times the current legal intoxication standard OF 0.08 plus the synergistic (multiplying) effect of the drugs. People v. Wright at 729, 94 Ill. Dec. 726, 488 N.E.2d 973. As previously mentioned, petitioner's ability to reason was severely compromised. Defendant was denied crucial

explanatory evidence to account for the memory loss. The ability to remember is often lost in a black-out and is symptomatic of extreme intoxication. Without investigating and presenting the substantial evidence petitioner was denied authentication of his memory loss.

9. That without all of the evidence being introduced at trial petitioner was prejudiced by a lack of impeaching cross-examination;

10. That there were several versions of the shooting which were not addressed. When self defense is properly raised, with evidence, the State must accept the burden proving guilt beyond a reasonable doubt.

VERSIONS: NEVER INVESTIGATED OR AT LEAST BROUGHT OUT

I. [Victim # 1--Deceased] 1) V # 1 was in a fight with V # 2

[Victim # 2--Petitioner] V # 1 tried to kick V # 2

V # 1 pulled out a gun and shot V # 2
(or V # 2 " " " " " " V # 1)

(EXHIBIT E-30)

II. Victim: weight-- 195 lbs.

Petitioner: weight-- 150 lbs.

Rick Rodriguez--

Eyewitness never investigated although listed in police reports

(Exhibit E-22, E-34)

Sitting by court (volley ball) noticed a fight break out with Tony (fat guy) and skinny guy . I saw skinny guy shoot at ? & hit Tony. Skinny guy was running and shooting back and Gerry had a gun & fired skinny guy 4-5 times & fled.

III. Detective Bernatek -- ...person # 1 (deceased) shot unknown

person # 2 (critical with GSWs to chest, left arm and back). Person # 1, was then shot by as yet unknown third person

(Exhibit E-18)

These multiple versions cast doubt on the state's theory of the shooting

10. (cont.) When there is evidence that the deceased was attempting to kick the petitioner the path of the bullet was one of self defense and brings in more doubt as to what happened. None of this evidence was considered in court and the lack of it was prejudicial to the defendant's case. In People v. Ellis (App., 62 Ill. Dec. 882, 437 N.E.2d 409) a "lunge" at the defendant led to a finding of voluntary manslaughter.

What we find here is a person who was convicted of battery (a violent crime) who was on drugs and alcohol (Exhibit E-36) who out weighed petitioner by 45 lbs., who had previously beat-up and drop-kicked petitioner (petitioner- multiple bruises, torn-up knees, etc. (Tr. B-17,18)) (Exhibit E-30) Battery--18 mos. probation.

" we hold that when the theory of self-defense is raised, the victim's aggressive and violent character is relevant to show who was the aggressor and the defendant may show it by appropriate evidence, regardless of when he learned it." (Lynch, 104 Ill.2d at 200, 83 Ill.

Dec.598, 470 N.E. 2d 1018)

This Lynch material is important/relevant in this case because their are conflicting reports of who the aggressor was at the time of the shooting.

11. On appeal another another Asst. Public Defender, Todd Shanker was appointed.

A) I received his letter describing the appellate process asking for any input I had, on Friday April 18, 1997. On Monday April 21, 1997, 3 days later he filed his brief. I had never received my transcripts. This was

ineffective assistance of counsel and a denial of my right of appeal. I sent extensive requests for assistance and for all necessary documents. See **Exhibits I-X** I sent in a pro se supplemental brief which **was GRANTED** on July 22, 1997 and **AFFIRMED** on July 25, 1997, only 3 days later. The only issue **was excessive sentence**. This was from his brief and was the only issue presented.

11. Witnesses listed on police reports were not called.
Specifically Rick Rodriguez. (Exhibit E-36,37)

2-1401 - APPELLATE COURT ISSUE

THE TRIAL COURT EXCEEDED ITS STATUTORY AUTHORITY AND VIOLATED JAN NEWELL'S PROCEDURAL DUE PROCESS RIGHTS BY SUMMARILY DISMISSING HIS *PRO SE* PETITION FOR RELIEF FROM JUDGMENT PURSUANT TO SECTION 2-1401 OF THE CODE OF CIVIL PROCEDURE.

2-1401 - PLA TO ILL. SUP. CT. ISSUE

THIS COURT SHOULD GRANT REVIEW TO RESOLVE THE CONFLICT IN THE APPELLATE COURTS AS TO WHETHER A PETITION FOR RELIEF FROM JUDGMENT FILED PURSUANT TO SECTION 2-1401 MAY BE SUMMARILY DISMISSED, AND IF SUCH DISMISSAL IS UNAUTHORIZED, WHETHER HARMLESS ERROR MAY BE APPLIED. IN THE ALTERNATIVE, THIS COURT SHOULD HOLD THIS MATTER IN ABEYANCE PENDING THE RESOLUTION OF *PEOPLE V. VINCENT*.

PETITION FOR WRIT OF HABEAS CORPUS
PERSON IN STATE CUSTODY

JAN NEWELL-K-50566

Dixon Corr.Cntr.
2600 N.Brinton
Dixon, IL 61021

I.

CASE HISTORY

Jan NewELL, pLaintiff, was convicted of 1st. Degree Murder pursuant to CH.38-9-1- A(1) in Cook County, case No.93CR19978. Plaintiff received a forty (40) year sentence. He was given a bench trial. The incident occurred on July 28, 1993. He was sentenced on October 22, 1996. As of June 28, 2008, He will have served 14 yrs., 11 Mos. of the sentence. By the Hearing date, well over 2/3^{rds}. of the sentence. He was born on 9/23/42 and is 64 yrs. old. Plaintiff outdate is July 14, 2013. Trial-2 days-Sept.20 and Sept.25.

ALLEGED

I After an altercation/fight, that I (plaintiff) left the scene, returned and approached the person who I had the fight with and while standing toe-to-toe, face-to-face, from 3-4 ft. away, with the persons arms outstretched towards plaintiff, that plaintiff pulled a gun with his right hand and shot that person, Anthony Rodriguez, in his right chest. That I then turned and as I was leaving either dropped or threw down the gun to the ground in the parking lot. As I was leaving, another man pulled out a gun and shot me in the back. As a result, I was left paralyzed from the chest down (T-5) by being hit in the spine. Anthony Rodriguez was fatally injured. The person who shot me fled the scene and threw his gun away. He was later questioned and released with no charges. Question--Why wasn't his gun tested by the crime Lab. technicians?

PRE-TRIAL, TRIAL, COUNSEL (Ass't. Public Defender--George Nichols)

I don't want to try to relitigate my case but the ~~instructions~~ instructions indicate a request for a " detailed " account, so I am including a discussion of the forensic evidence which I obtained after my direct appeal had been decided. This evidence was in discovery, which my P/D, George Nichols and my trial judge had not allowed me to see or to discuss. It was also never investigated or introduced at trial. My complete lack of knowledge of the criminal system was central to my conviction.

(24)

~~(24)~~

PART III - PETITIONER'S CLAIMS

SEE HANDWRITTEN CLAIMS NUMBERED
GROUNDS I-IV, GROUNDS A-G

1. State briefly every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. You may attach additional pages stating additional grounds and supporting facts. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds later.

BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUR STATE COURT REMEDIES WITH RESPECT TO EACH GROUND FOR RELIEF ASSERTED.

(A) Ground one _____

Supporting facts (tell your story briefly without citing cases or law):

(CLAIMS SECTION FOLLOWS WITH SUPPORT
DOCUMENTATION)

~~PART~~

(B) Ground two _____

Supporting facts:

(25)

III PETITIONERS CLAIMS

GROUND I - NEWELL PLEADS A SUBSTANTIVE CLAIM OF "ACTUAL/FACTUAL INNOCENCE", AS WELL AS, IN THE ALTERNATIVE TO A "PROCEDURAL" CLAIM OF "ACTUAL INNOCENCE TO OVERCOME PROCEDURAL DEFAULT OF ANY NON-EXHAUSTED CONSTITUTIONAL CLAIMS. FAILURE TO REVIEW WOULD RESULT IN A FUNDAMENTAL MISCARriage OF JUSTICE, THIS CLAIM IS PRESENTED, CUMULATIVELY, IN THE FOLLOWING ISSUES AND GROUNDS, NEWELL WAS DENIED HIS RIGHT TO A FUNDAMENTALLY FAIR TRIAL AS GUARANTEED BY THE 14TH & 5TH AMENDMENTS OF THE U.S. CONSTITUTION

GROUND II - NEWELL'S

CONSTITUTIONAL RIGHT TO A JURY TRIAL, WAS THE GIST OF A MERITORIOUS ISSUE PRECLUDING DIGNAL OF HIS POST-CONVICTION WHERE HIS WAIVER OF RIGHT TO JURY WAS INVOLUNTARY BECAUSE HIS ATTORNEY FALSELY PROMISED HIM, PURSUANT TO AN AGREEMENT WITH THE STATE, THAT HE WOULD BE CONVICTED OF 2ND DEGREE MURDER, IF HE WAIVED THE JURY AT TRIAL.

TRIAL COUNSEL TOLD MY FAMILY THAT WE HAD A DEAL. MY SISTER SUBMITTED AN AFFIDAVIT, WHICH THE STATE ALLEGED WAS FORGED. ON THE STATE'S COPY THE NOTARY STAMP WAS FADED. AS NEW EVIDENCE I HAVE ENCLOSED ANOTHER ORIGINAL COPY WITH THE STATE & THE COURT'S ASSESSMENT. THIS IS A BETTER NOTARY STAMP. MY SISTER'S SIGNATURE WAS NOTARIZED AND ROUTINELY SIGNED HER HUSBAND'S NAME. I THINK (SEE ATTACHED) SHE HAD POWER OF ATTORNEY.

I HAVE ALSO ENCLOSED WHAT THE STATE'S COPY LOOKED LIKE. AS WELL AS MY SISTER'S SIGNATURE ON A PROMISSORY NOTE, ALSO NEW EVIDENCE. I RECENTLY FOUND THIS NEW EVIDENCE, AND REQUEST TO SUPPLEMENT THE RECORD & FOR REVIEW UNDER FUNDAMENTAL FAIRNESS.

(SUPPORTING DOCUMENTS FOLLOW)
NUMBERED -II- 3-6, + RES A-G

Case No. 93 CR 19978

INEFFECTIVE ASSISTANCE OF COUNSEL ~~BY~~ BY NOT INTRODUCING EVIDENCE OF INNOCENCE AND CASE HISTORY OF INEFFECTIVE ASSISTANCE

ISSUES:

I. INEFFECTIVE ASSISTANCE OF COUNSEL

A. PRE-TRIAL

ASST. PUBLIC DEFENDER - GEORGE NICHOLS:

* PT. I WOULD NOT SHOW J. NEWELL (DEFENDANT) ANY INVESTIGATIVE PAPERWORK - DISCOVERY FROM THE STATE (POLICE REPORTS, POST-MORTEM, TOXICOLOGY, WITNESS STATEMENTS, REPORTS OF PHYSICAL EVIDENCE, ETC.)

AT MY REQUEST

COUNSEL SAID HE ASKED JUDGE ERKSON, IN A LIBERAL

REQUEST, AND THE JUDGE SAID NO, DEFENDANT COULD NOT SEE ANY, I HAD REQUESTED THAT HE ASK THE JUDGE.

"TIME" FACTOR

2. MY FAMILY FOUND A WITNESS, BRIAN McINTYRE,

WHO WOULD TESTIFY TO A 2-3 MIN. INTERVAL

PERTAINING TO THE "TIME" I LEFT THE FIGHT,

WHERE I GOT BEAT UP UNTIL I RETURNED AND SHOT THE VICTIM. NICHOLS NEVER CONSIDERED THAT I HADN'T SHOT HIM.

MR. NICHOLS HAD SAID THAT THE CASE

~~WAS~~ WOULD BE 2ND DEGREE, ~~HE~~ HE COULD

GET THE "TIME" DOWN, WITH A MAX. ~~OF~~ ^{SENTENCE} OF

10-15 YRS. (I WOULD DO $\frac{1}{2}$ OF THAT AND WITH TIME SERVED WOULD BE HOME IN 2-4 YRS.)

~~THE ONLY HE HAD~~

NICHOLS BEST "TIME" WAS 20 MINUTES, WITH HIS INVESTIGATORS WHO HE HAD SAID HAD INTERVIEWED WITNESSES (BUT THE 20 MIN. WAS ^{FROM} THE POLICE REPORTS) HE DISCUSSED THIS WITH MY FAMILY.

HE SAID THE JUDGE "WAS AWARE OF MY PHYSICAL CONDITION AND AGE AND HE WOULD GET 2ND DEGREE IF I TOOK A BENCH TRIAL

MY SISTER
MY BROTHER-IN-LAW
MY COUSIN (A LAWYER)

II-4

2. MR. NICHOLS SAID HE WAS FINALLY ABLE TO GET AN ASST. ST. ATTORNEY ASSIGNED TO THE CASE WHO HE COULD "WORK WITH". ROBERT BRAUN

FOR THE YEAR BEFORE TRIAL I HAD REQUESTED FOR HIM TO FIND OUT WHAT THE STATE WANTED TO DO REGARDING A CONFERENCE OR DEAL. (REQUESTED 402 CONF)

HE TOLD ME THAT ⁽¹⁾ THE STATE WANTED A CONVICTION, ^{AND DEBBIE'S FANNY,} FOR THE RECORD, BUT THAT SINCE WE HAD A WITNESS, B. MCINTURF, THAT THE JUDGE WOULD HAVE SOMETHING TO "HANG HIS HAT ON" AND THE STATE, INSTEAD OF A CONFERENCE WOULD ESSENTIALLY "LAY DOWN ON THE CASE"

THIS WAS THE AGREEMENT, FOR 2ND DEGREE. IF I TOOK

~~WE~~ WE HAD THIS AGREEMENT, ~~WE~~ A BENCH TRIAL. HE NEVER DISCUSSED A JURY TRIAL WITH ME OR THE TACTICS/DIFFERENCES. I ~~RE~~ RELIED COMPLETELY ON HIS JUDGEMENT. AT NO TIME DID HE EVER DISCUSS POSSIBLE DEFENSES, EVIDENCE, HOSPITAL REPORTS, ~~AND~~, STIPULATIONS, ETC.

ABOUT 1 WEEK BEFORE TRIAL, AFTER MY SISTER HAD AGAIN COMPLAINED ABOUT NO PAPERWORK HE BROUGHT ²⁻³ PAGES OF NOTES MENTIONING MY GETTING BEAT UP, AND BIKER GANGS - OUTLAWS AND HENCHMAN, BEING PRESENT AT THE TIME OF THE CRIME. HE SPENT AT MOST ¹⁰ MINUTES. HE SEEMED SURPRISED AT WHAT WAS IN THE NOTES, LIKE HE HAD NEVER READ THEM BEFORE. HE SAID WHO KNOWS, MAYBE IT WAS SELF DEFENSE. ¹ THOSE GANGS HAVE A REPUTATION FOR VIOLENCE. (THIS WAS 3 YRS AFTER THE SHOOTING)

AT THIS POINT
I ASSUMED THAT
I HAD SHOT
THE DECEASED

17-5

BENCH
TRIAL

3. ON FRI SEPT 20, 1996 WHILE I WAS WAITING, ^{HE SAID} IN THE COURTROOM WAITING CELL, THAT HE TRIED TO FIND B. MCINTURF ON WED SEPT. 18, BUT THAT HE HAD MOVED. HE HADN'T TALKED TO HIM FOR 8-12 MOS. HE DECIDED TO START THE TRIAL WITH THE INTENTION OF FINDING, MY WITNESS, LATER, SINCE THE STATE ^{WAS READY} ^(ON SEPT. 20, 1996) ^{WAS PRESENTED WITH} WE BEGAN TRIAL AND I ~~WAS~~ A JURY WAIVER ~~WHICH I SIGNED~~. THE STATE PRESENTED FIVE

NOTE: PRIOR TO TRIAL
MR. NICHOLS HAD NEVER
MENTIONED A JURY WAIVER
OR MY RIGHTS

OCCURRENCE WITNESSES AND THE CASE WAS CONTINUED UNTIL WED., SEPT. 25, 1996 WITH THE EXPECTATIONS OF BRINGING IN MCINTURF. THE STATE ^{ASST. STS. ATTY.} (MR. BERLIN) STATED (IN THE TRANSCRIPTS) THAT "MR. NICHOLS HAS A WITNESS WHO COULDN'T BE HERE TODAY" (MR. BERLIN ACKNOWLEDGED THIS ON SEPT. 20, AFTER THE WAIVER OF JURY AND WITNESS TESTIMONY) MR. BERLIN SAID "WE TALKED" REFERRING TO B. MCINTURF. (TR-A-71) AND THE DEAL.

4. MY FAMILY LOCATED MCINTURF OVER THE WEEKEND AND ^{MR. NICHOLS} DID NOT BRING HIM TO TESTIFY. (MCINTURF ^{HAD} REFUSED TO TESTIFY ^{IT HAD BEEN TOO LONG SINCE NICHOLS CONTACTED HIM.})

MR. NICHOLS ASKED MY FAMILY IF ANYONE OF MY FRIENDS COULD TESTIFY, FEELING THAT HE NEEDED SOME ^{THE} OF ^{WITNESS}, BUT

THE WITNESS, JOHN PIVORUNIAS, SERVED ONLY AS A CHARACTER WITNESS. WHY WOULD HE TESTIFY AT TRIAL AS A DEFENSE WITNESS? ^{ANSWER:} (TO COVER ~~UP~~ HIS PROMISE TO PRODUCE A WITNESS

HE ~~HAD A PLEA OF GUILTY~~ [REDACTED]

A FRIEND OF
MINE →
(TR AT B-23)

IMPORTANT: CMSL STARTED CASE ON FRI. WITHOUT OUR WITNESS SAID HE WOULD BE FOUND GUILTY WEEKEND. NEVER GOT WITNESS. CHANGED TO SELF DEFENSE WITHOUT MY INPUT (I NEVER SAID, I SHOT ANYONE.

~~THE SHOOTING~~

QUESTION: BY

PLACING SELF-
DEFENSE DIDN'T
HE AGREE THAT
I DID IT?

5) IT WAS AT THIS POINT THAT MR. NICHOLS DECIDED ON HIS DEFENSE CHANCE. HE NEVER DISCUSSED A NEW STRATEGY OF SELF DEFENSE, BUT AT TRIAL THAT IS WHAT HE DID. HE COMMENTED QUOTE, "THESE WITNESSES SEEM MORE CREDIBLE THAN I THOUGHT THEY WOULD BE," INDICATING THAT HE HAD NEVER INVESTIGATED THEM.

TR AT B-17, 18, 19)

6) MR. NICHOLS LACK OF PREPARATION WAS APPARENT IN HIS CURSORY CROSS-EXAMINATION AND ATTEMPTED WITNESS IMPEACHMENT. ^{AND ABANDONMENT} HE SUPPLIED NO FOUNDATION. PROPER PROCEDURE WOULD BE TO PLACE THE POLICE ^{OFFICERS}, ~~DETECTIVES~~ DETECTIVES OR INVESTIGATORS ON THE STAND ~~TO~~ TO TESTIFY AS TO THEIR NOTES OR STATEMENTS TAKEN FROM THE WITNESSES, AND THEN TO CONFRONT THE WITNESSES.

He began ^{CROSS-X} ~~then~~ stopped and abandoned the impeachment TR. at

THE STATE PRESENTED 5 WITNESSES:

3 - WHO ALLEGEDLY SAW THE SHOOTING

2 - WHO SAID THEY SAW ME BY MY CAR

(THE SHOOTING) ^{OF THE 3 - ONE ^{STAY W.} SAID HE DIDN'T SEE IT} in his statement & in pol. rpts that at trial he said he did see it - This was the witness Judge Erickson said was the most credible and believable and who he based the conviction on as the most ^{CREATABLE} ~~credible~~ witness (TR at B-35)

STATES COPY

KNABUSCH between the year 1994 until the trial date of September, 1996 - up to the first day of trial.

Mary Jane Knabusch

MARY JANE KNABUSCH

Norma Knabusch

NORMAN KNABUSCH

SUBSCRIBED and SWORN TO

before me this 26th

day of NOVEMBER, 1997

[Signature]

NOTARY PUBLIC

-A-

be proportionate to the manner in which the accused retaliates, and where a defendant's retaliation is disproportionate to the victim's provocation, the crime committed is murder, not manslaughter, especially if the defendant accomplishes the offense with a deadly weapon. People v. Pugh, 187 Ill. App. 3d 860, 868, 543 N.E.2d 875 (1st Dist. 1989) Furthermore, in light of the number and quality of the witnesses presented by the People, including witnesses with no grudge against or even acquaintance with defendant, and including a witness unacquainted with either the victim or defendant, who established beyond any doubt that the murder was cold-blooded, there is no question that the finding of guilty of murder was justified by the evidence.

It should be noted that Brian McInterf was not presented as a witness for the defense. Therefore, there would be no reason for the assistant state's attorneys to agree to forego rebuttal of his testimony. Furthermore, the concept that assistant state's attorneys, going through a trial, would agree to abandon available rebuttal defies logic. If the People agreed not to rebut, it was because they recognized that the testimony of Brian McInterf would not have supported a finding on the lesser-included offense of second degree murder.

NOTE:

Defendant's allegation that his jury waiver was involuntary suffers from the same infirmities. Defendants points out that enclosed with his petition is the affidavit of his sister, Mary Jane Knabusch, declaring that she also heard this alleged promise "more than one" [sic]. (R. C43) Defendant's

representation is incomplete. The affidavit of his sister includes that his brother-in-law was also privy to these conversations. Perhaps defendant's disinclination to mention Norman Knabusch's representations is either that he and his wife sign their names with the same distinctive "K" or "Norman" Knabusch accidentally misspelled his name, which appears on the affidavit as "Norma". Norman and Mary Jane (or Mary Jan as it appears on the affidavit, which also happens to be defendant's first name) also apparently spell "Knabusch" differently.

In any event, the affidavits of defendant and his sister are self-serving and unsupported by any other evidence, unlike the case in People v. Algee, 228 Ill. App. 3d 401, 591 N.E.2d 1001 (5th Dist. 1992), to which defendant cites. There, defense counsel admitted to denying defendant discovery, refusing defendant's telephone calls, hanging up on defendant after telling him he was not going to "Hold his g-damn hand", being unprepared for trial because he believed the People would be requesting a continuance and telling defendant that if he did not accept the offered plea, the judge would "unload" on him, which, while not in total agreement with witnesses, supported their statements that they heard defense counsel tell defendant that he would be sentenced to 120 years on his drug charges if he failed to plead guilty.

The case at bar more closely resembles People v. Maxwell, 173 Ill. 2d 102, 670 N.E.2d 679 (1996). Maxwell alleged, as does defendant, that his jury waiver for sentencing was the result of a misrepresentation by counsel that a

APPELLATE COURT ORDER ON P/C - 7/06/00 ✓

1-98-2920

made because his attorney falsely promised him that the State had agreed with defense counsel that if defendant opted for a bench trial, he would be convicted of second-degree murder and be sentenced to no more than 15 years in prison. He relies on the affidavits of his family members to support his claim and their assertion about McInturf's statement which defendant asserts would have shown that defendant acted under a sudden and intense passion. Defendant says that on this basis he waived a jury trial, but McInturf did not testify. He concludes that he presented the gist of a meritorious constitutional claim precluding summary dismissal of his petition.

Note: In reply, the State attacks the factual significance of McInturf's statements given the other evidence against defendant.

The State also questions the authenticity of the joint affidavit provided by defendant's sister and brother-in-law, and it characterizes the affidavit as self-serving and unsupported by other evidence.

We review defendant's allegations de novo. People v. Coleman, 183 Ill. 2d 366, 388-89 (1998). As the supreme court stated in Coleman, "At the dismissal stage of a post-conviction proceeding, all well-pleaded facts that are not positively rebutted by the original trial record are to be taken as true." Coleman, 183 Ill. 2d at 385. Further, to withstand summary dismissal, as here, defendant's pro se petition need only set

ORIE

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

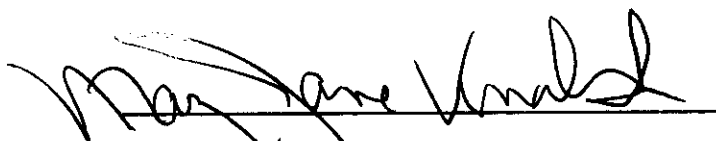
A F F I D A V I T

MARY JANE KNABUSCH, being first duly sworn on her oath and says as follows:

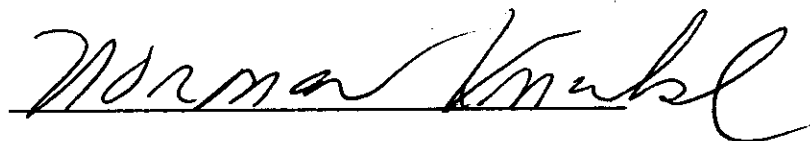
1. That she is the sister of JAN B. NEWELL.
2. That sometime in the summer and early fall of 1996, before the trial of JAN B. NEWELL commenced, that Mr. GEORGE NICHOLS , Asst. Public Defender, discussed MR. NEWELL'S case with her and her husband, NORMAN KNABUSCH. This was by telephone and occurred more than one.
3. That in those conversations, MR. NICHOLS stated, "JAN NEWELL" was told to take a bench trial - and the court would find him guilty of second degree murder.
4. MR. NEWELL was told that there was an agreement between the State and the P.D.'s office where he would get a conviction and serve only 2 to 4 years of incarceration.
5. That in conversation (telephoned) with JAN B. NEWELL'S attorney (P.D. GEORGE NICHOLS), from 1994 through September, 1996 he was promised second degree if he took a bench trial.
6. That all of these telephone conversations were made between P.D. GEORGE NICHOLS and MARY JANE KNABUSCH and NORMAN

- E -

KNABUSCH between the year 1994 until the trial date of September, 1996 - up to the first day of trial.



MARY JANE KNABUSCH



NORMAN KNABUSCH

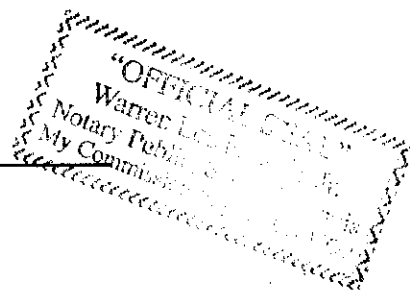
SUBSCRIBED and SWORN TO

before me this 26th

day of NOVEMBER, 1997



NOTARY PUBLIC



DISBURSEMENT REQUEST AND AUTHORIZATION

Principal	Loan Date	Maturity	Loan No	Call	Collateral	Account	Officer	Initials
\$10,000.00	01-11-2000	01-20-2005	797958	6B			222	dyf

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: Jane Knabusch (SSN: 313-52-8964)
14229 Cottage Grove Avenue
Dolton, IL 60419

Lender: South Holland Trust & Savings Bank
16178 South Park Ave.
South Holland, IL 60473-1524
(708) 333-2600

LOAN TYPE. This is a Fixed Rate (8.500%) Disclosable Loan to an individual for \$10,000.00 due on January 20, 2005.

PRIMARY PURPOSE OF LOAN. The primary purpose of this loan is for:

☒ Personal, Family, or Household Purposes or Personal Investment.

☐ Business.

DISBURSEMENT INSTRUCTIONS. I understand that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$10,000.00 as follows:

Amount paid to others on my behalf: \$10,000.00
\$10,000.00 to Jane Knabusch

Note Principal: \$10,000.00

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, I REPRESENT AND WARRANT TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN MY FINANCIAL CONDITION AS DISCLOSED IN MY MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED JANUARY 11, 2000.

BORROWER:

x 
Jane Knabusch, Individually

CREDIT INSURANCE DISCLOSURE

VOLUNTARY CREDIT INSURANCE. CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT.

☒ By signing below, I acknowledge that I am not obtaining credit insurance for this loan for one of the following reasons: (A) I am not eligible for credit insurance; (B) Credit insurance is not available from Lender; or (C) If I am eligible and credit insurance is available from Lender, I do not want it.

Prior to signing this Credit Insurance Notice on January 11, 2000, I read and understood all of the provisions of this Disclosure.

BORROWER:

x 
Jane Knabusch, Individually

CLAIMS

GROUND III - WHETHER NEWELL RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL BEFORE TRIAL, DURING TRIAL, DURING THE PENALTY PHASE, ON DIRECT APPEAL AND ON POST-CONVICTION PROCEEDINGS AND POST-CONVICTION APPEAL.

NEWELL CLAIMS THAT HIS COUNSEL'S TRIAL AND APPELLATE PERFORMANCE AMOUNTED TO DENIAL OF HIS 6TH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. HE IS CLAIMING MANY DEFICIENCIES. THEY ARE LISTED HEREIN AS GROUNDS A - G
(GROUNDS A-G ARE SUB GROUNDS UNDER GROUND III)

GROUND A + GROUND B ARE GROUPED TOGETHER FOR EASE OF DISCUSSION

GROUND A - COUNSEL DID NOT CONDUCT A THOROUGH INVESTIGATION OF FACTS SURROUNDING THE CHARGE & POSSIBLE DEFENSES,
GROUND B - COUNSEL FAILED TO ADEQUATELY PREPARE FOR TRIAL.

NEWELL ALLEGES THAT COUNSEL 1) DID NOT OBTAIN AN INVESTIGATOR TO DISCOVER MITIGATION FACTS, AN INDEPENDENT BALLISTICS/FORENSICS EXPERT TO EXAM THE FATAL BULLET, VICTIM'S ~~WOUND~~ WOUND;

2) FAILED TO INVESTIGATE/PRESENT MATERIAL

PRIMA FACIE EVIDENCE AVAILABLE AS LAB REPORTS, POLICE STREET NOTES, CRIME SCENE TECHNICIAN REPORTS, HOSPITAL RECORDS, ETC.

AS A RESULT, COUNSEL HAD NO THEORY OF DEFENSE AND THAT HE WAS UNPREPARED FOR EFFECTIVE CROSS-X, & FILED IN-ADEQUATE OR NO PRE-TRIAL MOTIONS AND WAS DEFICIENT IN BOTH THE GUILT AND PENALTY PHASE OF THE TRIAL, ALL TO THE PREJUDICE OF NEWELL, WITH THE RESULT THAT HAD THESE MATERIALS/EVIDENCE BEEN PRESENTED AT TRIAL THE TRIAL OUTCOME WOULD HAVE BEEN DIFFERENT.

SEE TESTIMONY & CROSS-X

DETECTIVE BUSIN - TR at B-3, B-9

DETECTIVE BARNATEK - TR at B-13, B-17

(SUPPORTING DOCUMENTS FOLLOW)

NUMBERED II-1,2

J. NEWELL-K50566
CASE NO. 93CR19978

CUMULATIVE INEFFECTIVENESS OF COUNSEL BY NOT
INTRODUCING EVIDENCE OF INNOCENCE/GUILT (MATERIALLY IMPORTANT)

ARGUMENT

SECT. II - ①

THAT DIRECT AND MATERIAL PHYSICAL EVIDENCE WAS NOT PRESENTED TO THE COURT, AT PETITIONER'S TRIAL, AND HAD THAT BEEN DONE THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT, ALL TO THE PREJUDICE OF THE PETITIONER

I WAS NEVER SHOWN DISCOVERY

At trial the State presented eyewitness testimony. There was no physical evidence presented which linked the petitioner/defendant to any weapon.

The eyewitnesses testified to a face-to-face, toe-to-toe confrontation where the deceased had his arms outstretched with the palms up. The defendant was said to approach the deceased and from 3-4 feet away, pull a gun with his right hand, raise it up to the deceased's chest and shoot him point blank in the chest.

POST MORTEM REPORT -- there was a stipulation to the report

*I NEVER AGREED TO
OR KNEW THAT A STIP-
ULATION WAS TO BE
GIVEN*

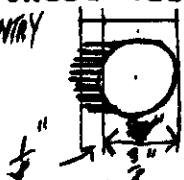
that the fatal bullet entered 20" from the top of the head and 4" to the right of the midline. The path was from front to back and right to left and that a medium caliber bullet was recovered from beneath the skin of the left back.

*I NEVER
AGREED TO STIP*

The path was indicated to be through all soft tissue. There was no fracture of the ribs or long bones. (SEE ACTUAL REPORT SECT. III)

HOWEVER, because there was a stipulation, the court did not hear that the bullet was found 14" from the top of the head and 4" to the left of the midline, i.e. the trajectory was severely upwards and sideways.

AND In addition there was a margin of abrasion from 7-11 o'clock, of 1/8th. in. ON AN ENTRY WOUND OF 3" BY 3"



The bullet had to enter from the right of the deceased.

Based on the eyewitness testimony, the defendant could not have twisted his hand or reached far enough to his left to achieve the path of the bullet as indicated in the post-mortem report.

CRIME LABORATORY FIRED EVIDENCE REPORT

EVIDENCE NOT INTRODUCED AT TRIAL

there was a fired evidence report indicating that the fatal bullet could not be identified with the alleged murder weapon. In fact there was evidence

EVIDENCE NOT INTRODUCED AT TRIAL (CONT.)

II - 2

of another gun found at the scene, which was the same caliber as the alleged murder weapon. There was evidence of other fired bullets found at the scene.

CRITICAL EVID

NOTE: For the fatal bullet to have been so damaged that that it was not suitable for comparison, it had to hit something. However, the path of the bullet was through soft tissue. There were no fractures of the ribs or long bones. If the bullet had been deflected off of a rib, in accounting for the upwards path, that would not account for enough damage so as not to be able to be identified with any specific weapon

FATAL BULLET HAD TO
HIT A HARD OBJECT/SURFACE
BEFORE STRIKING DECEASED
ANSWER "MY LFT. ARM"
NEVER INVESTIGATED

CRIME LABORATORY (GSR)

GUNSHOT RESIDUE TESTS-- both the deceased and the defendant were administered GSR tests. Both were inconclusive. For both to have been given the test there had to be doubt as to the actual shooting. There were detective notes indicating that the deceased shot the defendant first.

FINGERPRINTS-- there were no fingerprints found on the alleged murder weapon (NOT SU DID THEY TEST BOTH WEAPONS?)
(NO INDICATION)

Trial testimony was that from 3'-4' while facing the deceased with his hands outstretched, that the defendant shot him, turned and after a short distance through away the gun.

What happened to the GSR and the fingerprints?

NO - DIMINISHED CAPACITY DEFENSE -- emergency room testing showed

NEVER BROUGHT UP.
I FOUND OUT WHEN MY SISTER
GOT MY MEDICAL RECORDS AFTER
DIRECT APPEAL WAS DENIED.

that defendant had a blood alcohol level of .213 mg/dl with a positive for amphetamines. .213 is more than 2.5 times the legal limit and was taken about an hour after the shooting and after many diluting IV's

That Judge Erickson and appointed counsel refused to show Defendant any evidence, discovery or crime lab. reports prior to trial. Defendant obtained the evidence after the direct appeal process ended.

GROUND - C

COUNSEL FAILED TO ADEQUATELY CONSULT WITH HIS CLIENT TO FULLY INFORM HIM ON IMPORTANT ISSUES AND DECISIONS INCLUDING ADVANTAGES AND DISADVANTAGES OF: 1) NEVER DISCUSSED THAT BY COUNSEL ALLEGING SELF DEFENSE AS A THEORY OF DEFENSE THAN NEWELL WOULD BE ADMITTING THAT HE SHOT THE DECEASED AND ~~AND~~ ADMITTING TO MURDER. NEWELL HAD STATED, FROM THE ~~THE~~ ~~THE~~ - BEGINNING THAT HE DID NOT REMEMBER FIRING A WEAPON OR SHOOTING THE DECEASED;

2) STIPULATIONS;

3) JURY WAIVER;

4) TESTIFYING ON HIS OWN BEHALF;

COUNSEL PLACED NEWELL ON THE STAND WITH NO PREPARATION. ONLY TO SAY THAT NEWELL HAD NO MEMORY OF THE SHOOTING WITHOUT ANY REASON FOR MEMORY LOSS, HAVING NEVER INVESTIGATED/DISCOVERED ~~THE~~ THE MEDICAL RECORDS SHOWING THAT NEWELL WAS SEVERELY INTOXICATED, CONFUSED, INCOHERENT WITH A BLOOD LEVEL OF .213 WHERE .08 IS ACCEPTED AS IMPAIRED AND THAT THIS LEVEL WAS AFTER DILUTING IV'S AND OVER AN A PERIOD OF TIME AFTER BEING SHOT. COUNSEL FAILS TO DEVELOPE/INVESTIGATE/PRESENT A DIMINISHED CAPACITY DEFENSE OR IN THE LEAST TO PRESENT IT AT SENTENCING FOR MITIGATION.

(TR-^{AT} B-27)

(SUPPORTING DOCUMENTS FOLLOW)

NUMBERED II - 10, 11

6. That without this evidence being introduced the Judge was left to believe the State's version consisting entirely of witness testimony. The State produced no physical evidence in support of it's case as to weapon to fatal bullet, defendant to crime, etc.

7. That the three witnesses who claimed to have witnessed the actual shooting: Jeff Adams-- his testimony (does not reflect the actual postmortem forensic evidence) of toe to toe, face to face (EXHIBIT - E-23,31,32) (Tr. A-11); Stan Weliczko-- who ,it can be shown, testified to information opposite to his previous statement, thus committing perjury, George Miller-- his testimony that the victim was facing defendant, when shot, is also, not reflective of the post-mortem evidence which was never before the court (Tr. A-57, line 7,8)

8. That petitioner was denied possible defenses or mitigation because facts were not produced at trial concerning petitioner's mental state. A. Diminished capacity /Intoxication-- Hospital Records:

Christ Hospital-- " upon arrival, the patient was intoxicated and somewhat confused". " Blood alcohol level was 213 mg/dl. Tox screen was positive for amphetamines". (EXHIBIT E-27,28,29, (petitioner will swear, under penalty of purjury, that he has never voluntary taken amphetamines)

This level was ascertained at the emergency room shortly after the incident and after losing a large amount of blood and receiving diluting IV'S (EXHIBIT E-33). A blood alcohol of 213 mg/dl is also expressed as .213 BAC which a psychological expert could have testified that the level of mental impairment was extreme. This level is almost three (3) times the current legal intoxication standard OF 0.08 plus the synergistic (multiplying) effect of the drugs. People v. Wright at 729, 94 Ill. Dec. 726, 488 N.E.2d 973. As previously mentioned, petitioner's ability to reason was severely compromised. Defendant was denied crucial

E-27

II - 11

CHRIST Hospital and Medical Center

J. NEWELL - K-50566
CASE No: 93 CR 19978

DISCHARGE SUMMARY

NEWELL, JAN
MR #0513316

ADMISSION DATE: 07/28/93 DISCHARGE DATE: 08/18/93

PRINCIPAL DIAGNOSIS: Gunshot wound to the chest.

FINAL DIAGNOSIS: T5 fracture, open cord injury and
respiratory failure.

SECONDARY DIAGNOSIS: Open radial shaft fracture.
Hemo- pneumothorax.
ETOH intoxication.
Lung contusion.
Post traumatic pneumonia.

HISTORY OF THE PRESENT ILLNESS: The patient is a 33-year-old male with a gunshot wound to the clavicle lateral to the right of the spine and severe left arm laceration with left sided pneumothorax. He was intubated in the Emergency Room.

PHYSICAL EXAMINATION: Upon arrival, the patient was intoxicated and somewhat confused. Vital signs on admission - blood pressure 54/palpable, pulse 130, respiratory rate 30.

LABORATORY DATA: WBC 8.4, hemoglobin 9.6, hematocrit 28.5. Blood alcohol level was 213 mg/dl. Tox screen positive for amphetamines.

Radiographic studies done this hospital stay are numerous - 7/28/93 left forearm films show comminuted fracture middle third of the shaft of the left radius. KUB shows ileus. Multiple chest x-rays performed including one with evidence of gunshot injury to the left hemithorax and retropleural hematoma. Pulmonary angiogram 8/6/93 shows no pulmonary embolism. CT chest on admission shows left hemo- pneumothorax, left lung contusion, multiple spinal fractures, partial atelectasis.

Consultants this hospital stay include Dr. Hurley and rehabilitation.

Operative procedures this hospital stay - the patient was brought to the operating room on 7/29/93 where he underwent irrigation and debridement of left comminuted radius fracture performed by Dr. Redondo. The patient also underwent left thoracotomy and evacuation of clot and hemothorax performed by Dr. Gonzalez.

The patient was taken to ICU intubated and ventilated. The patient was brought back to the operating room on 8/3/93 for open
CONTINUED

DISCHARGE SUMMARY

GROUND D

COUNSEL FAILED TO DEVELOP A VIABLE DEFENSE STRATEGY:

1) THE "DEAL" FOR 2ND DEGREE WAS BASED ON WITNESS B. MCINTYRE'S TESTIMONY IF NEWELL AGREED TO A BENCH TRIAL, BECAUSE COUNSEL NICHOLS ALLOWED THE TRIAL TO PROCEED ON THE 1ST DAY, WITHOUT REALIZING THAT MCINTYRE WOULDN'T TESTIFY, HE GAVE NO OPENING STATEMENT AND LOST ANY, EFFECTIVE, CROSS-X OF THE STATE'S WITNESSES, I.E. JUST GOING THROUGH THE MOTIONS WITHOUT ANY AFFIRMATIVE DEFENSE, PRIOR TO THE 2ND DAY OF TRIAL HE FOUND THAT HIS WITNESS SUPPORTING SUDDEN & INTENSE ANGER WOULDN'T TESTIFY AND SUBSTITUTED A FRIEND OF MINE, JOHN PINARONES, TO COVER FOR HIM, BUT JOHN ONLY ATTESTED TO MY NON-VIOLENT CHARACTER. COUNSEL THEN CHANGED TO A SELF DEFENSE ARGUMENT (TR at A-71)

2) FAILED TO INTRODUCE/INVESTIGATE PRESENCE OF ANOTHER SHOOTER AT THE SCENE (GERRY) SHOWING REASONABLE DOUBT, ALTERNATIVELY, IF COUNSEL DIDN'T HAVE THE POLICE REPORTS, IT WAS A BRADY VIOLATION. ~~THE~~ ANOTHER EYEWITNESS, RICH RODRIGUEZ, CONFIRMED GERRY'S PRESENCE, BUT WAS NEVER PRODUCED AT TRIAL. GERRY WAS INVESTIGATED BY POLICE AS A PERSON SEEN LEAVING THE SCENE.

BY RESTING WITHOUT PRESENTING ANY EVIDENCE THE JUDGE WAS LEFT TO BELIEVE THE PROSECUTION WITNESSES AS THE ONLY ACCOUNT OF THE INCIDENT, SEVERELY PREJUDICING NEWELL.

NOTE: HE CHANGED TO SELF DEFENSE WITHOUT PRESENTING ANY EVIDENCE OR PRACTICAL THEORY

COULDN'T GET AN AFFIDAVIT FROM R. RODRIGUEZ DUE TO MY INCARCERATION

(SUPPORTING DOCUMENTS FOLLOW)

NUMBERED - IV - 1, 3, 8, ~~II~~ II - 13, 14 II - 4, 7

SECTION II-1

1) Shows 3 different versions of events. This evidence was never shown to me or discussed with me. I requested to see any discovery, police reports, evidence, etc. Counsel said that Judge Erickson would not allow me to see it. I asked counsel to verbally motion the court. ~~THE~~ COUNSEL NEVER USED THIS INFO. OR DIDN'T HAVE IT (BRADY)

2) Version II indicates the presence of a third person shooting at the scene. This was never brought up or investigated. Police reports show that another person was questioned as a shooter at the scene. (E-22)

IN VERSION ~~II-1~~

RICK RODRIGUEZ VERSION CONTRADICTS EYE WITNESS TESTIMONY AND WAS NEVER INVESTIGATED

ALSO: NOTE STREET NOTES DIFFER FROM TYPED OUT VERSIONS i.e. ^{2ND} FIGHT BY COURT (VOLLEYBALL) - ~~STREET~~

SKINNY GUY (DEFENDANT) SHOOT AT ? + HIT TONY.

ALSO:

1) NOTE: CROSS-EXAMINATION OF DETECTIVE BERNATICK
NOTHING MENTIONED ABOUT DIFFERENT VERSIONS

SEE (TR AT B-17
" " B-18
" " B-19)

2) I KEPT ASKING FOR DISCOVERY TO SEE WHAT EVIDENCE COUNSEL COULD INVESTIGATE + PRESENT IN COURT + TO DETERMINE GUILT/INNOCENCE

IV-2

There were several versions of the shooting which were in the police reports , but were not introduced at trial:

POLICE REPORT

I. [Victim # 1-- Deceased]	V # 1 was in a fight with V # 2
[Victim # 2--Petitioner]	V # 1 tried to kick V # 2
	V # 1 pulled a gun and shot V # 2
	(or V # 2 " " " ")

(E-30)

II. V # 1: weight --195 lbs. , age 28
 Petitioner : " 150 " , " 50

(THIS WITNESS,
 NEVER
 INVESTIGATED)

Sitting by the vollyball court, noticed a fight break out with Tony(fat guy) and skinny guy. SKINNEY SHOT AT ~~him~~ & HIT TONY ... and Gerry had a gun and fired at skinny guy. At trial another man(Joe M.) was said to shoot defendant.

III. Detective Bernatek -- ... person # 1 (deceased) shot unknown person # 2 (critical with GSWs to chest, left arm and back). Person # 1, was then shot by as yet unknown third person. (E-18)

HE TESTIFIED BUT WITHOUT ANY
 EVIDENCE QUESTIONS ON THIS VERSION
 ON CROSS-X

These versions were never brought out at trial, were not investigated or were suppressed by the prosecution. Had these facts been known at trial , petitioner could have raised proper defenses of possible

- self defense
- reasonable doubt
- diminished capacity
- actual innocence

had petitioner had access to discovery with counsel.

These multiple versions cast doubt on the state's theory of the shooting.

The physical/material evidence , which was not presented at trial makes implausible the eyewitness testimony and if presented would have cast reasonable doubt of guilt and questioned the conviction and sentencing based on an unprovoked shooting.

530C

IV-3

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICEDATE OF ORIG. CASE REPORT DATE OF THIS REPORT
DAY MONTH YEAR DAY MONTH YEAR28 Jul 93 28 Jul 93
BEAT/UNIT ASSIGNED
5211

OFFENSE CLASSIFICATION—LAST PREVIOUS REPORT VICTIM'S NAME AS SHOWN ON CASE REPORT

Domestic

Rodriguez, Anthony

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations, including: inter-watch memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes, and any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

V #1 LAD IN A FIGHT W/V #2

V #1 TRIED TO KICK V #2

V #1 PULLED OUT GUN &
SHOT V #2

LOT

V #2 C/O 51

CHEST T&T
BLK ARM

JOHN DOE

GARAGE

V #1 C/O 25 R. CHEST

JOHN ALAN DOE

DEAD

DR. STAB W&D

V #2 - C/O BEL. L. CLAY DR. GONZALES

G.S. CATER BACK

RITH KNEES

L. C.S. T&T

TORN UP

L. ARM TORN & BROKEN

DIRTY

REPORTING OFFICER'S SIGNATURE—STAR NO.

RECEIVED BY SUPERVISOR'S SIGNATURE—STAR NO.

DAY—MO.—YR. TIME

CPD-23.02 (REV. 2/83)

#2113

4 Aug 93 10300

R.D. NO.

X347 989

CHICAGO POLICE DEPARTMENT		Case 1:08-cv-03711 Document 1	Filed 06/30/2008	Page 48 of 94	E-18	RD NO 342950
ADDRESS OF SERVICE 13600 S. Calhoun		VICTIM'S NAME IV-8		SEX-RACE-AGE		AREA-DIST-BE- 2 04
ASSIGNMENT TYPE CS		REQUESTED BY 0432		DATE RECEIVED - TIME 28 Jul 93-0450		UNIT

PHOTOGRAPHY		
a O/A gravel area at 13600 S. Calhoun	b O/A Boat (IL 27760) C/U damage, left side	g ID Unk #2 C/U wounds, chest.
a O/A weapon on ground C/U	e ID Unk #1. C/U wound, right side chest	h
c O/A Ford (1ic/ RD 2488) C/U damage, rear side	f O/A tattoo right arm	i

FINGERPRINTS	ELIM PRINTS <input type="checkbox"/> YES <input type="checkbox"/> NO	IN CUSTODY <input type="checkbox"/> YES <input type="checkbox"/> NO	NAME (LAST FIRST)	SEX-RACE DOB	C.B. NO	IR NO
--------------	---	--	-------------------	--------------	---------	-------

MED NEG LIFT	LOCATION FOUND	FN	MED NEG LIFT	LOCATION FOUND
--------------	----------------	----	--------------	----------------

W	five shot revolver SR# 19938 (PH)			
---	-----------------------------------	--	--	--

Fingerprints photographed by John J. Miller #15765					1 - 4"x5" neg 28 Jul 93 JM
--	--	--	--	--	----------------------------

POSSIBLE SUSPECT INFORMATION		RACE	TOTAL NO OF LIFTS	DATE OF TRANSMITTAL
------------------------------	--	------	-------------------	---------------------

<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	<input type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE			
---	--	--	--	--

<input type="checkbox"/> PALMS <input type="checkbox"/> IMPRESSIONS	<input type="checkbox"/> FINGERPRINTS	SUITABLE FOR COMPUTER <input type="checkbox"/> YES <input type="checkbox"/> NO	PRINTS SUITABLE FOR COMPARISON <input type="checkbox"/> YES <input type="checkbox"/> NO	INITIALS OF EXAMINER	DATE
---	---------------------------------------	---	--	----------------------	------

VEH YEAR	MAKE & MODEL	COLOR	STATE LICENSE NO	VIN
----------	--------------	-------	------------------	-----

	Ford Taurus	black	RD 2488	1FACDPS340P0144895
--	-------------	-------	---------	--------------------

PHYSICAL EVIDENCE	
PROP INVENT NO - UNIT	DESCRIPTION & LOCATION

1198251 177	one Iver Johnson 5 shot revolver, 1 1/2"bbi, chrome, SR# 19938; two 38 S&W discharged cartridge cases and three 38 S&W cartridges taken from the revolver at 13600 S. Calhoun.	PH EA
-------------	--	----------

1198252 177	one AA GSR# 93-142 administered to Unk #1 one AA GSR# 93-143 administered to Unk #2 at Christ Community Hospital ER.	
-------------	--	--

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DETAILS OF CASE		
-----------------	--	--

At 13600 S. Calhoun R/T met Det. Bernatek who related that during a disturbance unknown pers #1 (deceased) shot unknown person #2 (critical with GSWs to left chest, left arm and back).		
--	--	--

person #1 was then shot by an as yet unknown third person. R/T photographed views depicting conditions of the scene and surrounding area, searched for and collected the noted physical evidence. Vehicles were examined that appeared to have been damaged in the gunfire exchange with negative results. At Christ Hospital, R/T examined and photographed views depicting the condition and wounds of both parties. AA GSR examinations were administered to both persons at the request of Bt 5212. Polaroid photos were taken and turned over to Bt 5212.		
--	--	--

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--	--	--

STIGATING OFFICER'S NAME	STAR NO	UNIT	BEAT OFFICER'S NAME	STAR NO	UNIT
--------------------------	---------	------	---------------------	---------	------

Arbataitis #20315	Bernatek #20016	5212/522	Busin	3004	0432/004
-------------------	-----------------	----------	-------	------	----------

REPORTING TECHNICIAN - PRINT LAST NAME - FIRST - STAR NO - UNIT	DATE ARRIVED - TIME	TIME COMPLETED
---	---------------------	----------------

Patrick Moran #7713	Robert Baikie #3623	177	28 July 93 - 0510	1000
---------------------	---------------------	-----	-------------------	------

OFFICIAN'S SIGNATURE	DATE	APPROVING SUPERVISOR (PRINT NAME) - STAR NO
----------------------	------	---

	28 July 93	
--	------------	--

SUPERVISOR'S SIGNATURE		
------------------------	--	--

1949 (REV 10-92)		
------------------	--	--

1 THE COURT: Any objection?

2 MR. BERLIN: No objection.

3 THE COURT: They will be admitted.

4 MR. NICHOLS: With that this Defense rests.

5 THE COURT: Rebuttal?

6 MR. BERLIN: We have no rebuttal.

7 THE COURT: Argument? State, waive opening?

8 MR. BERLIN: Yes.

9 THE COURT: Argue?

10 MR. NICHOLS: Judge, it's clear in this case,
11 Judge, that my client acted both in self-defense and
12 as a result of provocation.

13 Judge, the description of the fight by
14 the witnesses shows that they were trying to minimize
15 what happened. There this was a brief tussle but the
16 injuries that Officer Bernatek saw when he went to the
17 hospital, the bruises on my client's face, on his
18 hand, on his arms, and on his knees show there was a
19 longer fight than what is indicated by the witness.

20 I would just like to say again that the
21 point of view of those witnesses was quite different
22 than the point of view of my client. My client had
23 just been beaten, had just had his face rubbed in the
24 gravel, and he was standing three feet away from the

1 man who had just done this to him.

2 Judge, his act was an act of
3 self-defense and was a result of a sudden and intense
4 passion. Judge, in this case although a murder
5 finding may be warranted, that finding should only be
6 murder in the second degree. Thank you, Judge.

7 THE COURT: Let me ask you before you sit down the
8 sudden and intense passion between the confrontation
9 between the victim, victim and defendant, at the time
10 of first fight.

11 MR. NICHOLS: Yes.

12 THE COURT: The testimony is that the kick was --
13 that the victim kicked the defendant and rubbed his
14 face into the cinders. That's the sudden and intense
15 passion?

16 MR. NICHOLS: Yes.

17 THE COURT: Pursuant -- so that it's your argument
18 he came back and shot him?

19 MR. NICHOLS: I don't think when he came back
20 that was his intention. I think when he got there,
21 confronted with the man, and saw the man's hands,
22 clawed, he thought he was being attacked again, and he
23 acted in response to that provocation, in response to
24 that action by the decedent.

WHY DIDNT COUNSEL USE THE POLICE REPORT
THAT SHOWS DECEDENT ATTACKING
DEFENDANT? (SEE NEXT PG.)

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICE

DATE OF ORIG. CASE REPORT

DATE OF THIS REP

28 JUL 1993

28 JUL 1993

OFFENSE CLASSIFICATION—LAST PREVIOUS REPORT VICTIM'S NAME AS SHOWN ON CASE REPORT

BEAT/UNIT ASSIGNED

Domestic

Rodriguez, Anthony

5212

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations, including: inter-watch memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes, and any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

Ricardo Rodriguez m.w. 33 DOB 5/1/60
774 3485th - Apt 1 - 601 504 -
1-708-501-6870 501-501-6870
Copies - 400 - Downer St.
New York Copied World

Sitting in court I noticed a
fight break out with Tony Chatoy
and Skinny Guy.

I saw Skinny Guy shoot
at Chatoy & hit Tony Guy on Bike
Skinny Guy was running & shooting
back & Chatoy had a gun &
fired Skinny 4-5 times & fled

5 ft. - upper right chest.

NEVER INVESTIGATED

Live GSW Left Clavicle
& center of back

REPORTING OFFICER'S SIGNATURE—STAR NO.

RECEIVED BY SUPERVISOR'S SIGNATURE—STAR NO.

DAY—MO.—YR. TIME

CPD-23.122 (Rev. 2/83)

4 AUG 93 10300

1342 989

IV-7

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICE

DATE OF ORIG. CASE REPORT: 28 Jul 93
DATE OF THIS REP: 28 Jul 93
BEAT/UNIT ASSIG: 5211

OFFENSE CLASSIFICATION: LAST PREVIOUS REPORT: VICTIM'S NAME AS SHOWN ON CASE REPORT

Homicide

Rodriguez, Anthony

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations, including: inter-watch memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes, and any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

GERALD J. FUNDUKIA 9 JUL 48
14868 SHEPARD DR. DOLTON
333 38 4539 (708) 849 4106

ABLE HEATING - 8518 S. ASHL
SERVICE - 224 7212
R-0133749

M/W/44 YRS.

5-11/178

was at home after 1 AM. got
call that outland were over
the way to the River Bar.

But he does not know if they
got them. He will try to find
out who they were. He states that
he was home at the time of the
shooting w/ GIL RICH.

JAE CARLSON F/1

REPORTING OFFICER'S SIGNATURE-STAR NO.

RECEIVED BY: SUPERVISOR'S SIGNATURE-STAR NO.

DAY-MO.-YR. TIME

342 989

40

GROUND E -

COUNSEL FAILED TO PRESERVE NEWELL'S CONSTITUTIONAL RIGHT TO CONFRONTATION OF WITNESSES, UNDER THE 6TH AMENDMENT, BY STIPULATING TO THE POST-MORTEM REPORT, WITH NOTHING OF RECORD THAT NEWELL HAD KNOWINGLY AGREED WITH OR WAS GIVEN THE RIGHT TO OBJECT. NEWELL STATES, UNDER OATH, THAT HE KNEW NOTHING ABOUT THE POST-MORTEM REPORT OR THE STIPULATION TO BE DONE. COUNSEL DID NOT ADEQUATELY EXPLAIN THE CONSEQUENCES OF ADMITTING TO THE CAUSE OF DEATH AND LOST CRUCIAL ~~THE~~ BULLET TRAJECTORY EVIDENCE OF FACTUAL INNOCENCE WHERE THE M.O.A. (MARGIN OF ASSASSINATION) SHOWED A TRAJECTORY WHICH WAS IMPLAUSIBLE/IMPOSSIBLE BASED ON THE PROSECUTION EYEWITNESS TESTIMONY. COUNSEL FAILED TO MAKE A DEMONSTRATION VIDEO OF LASER PATHS WHICH WOULD ~~MAKE~~ SHOW THAT THE "TOE-TO-TOE", "FACE-TO-FACE", HANDS FORWARD ~~WOULD~~ WOULD ALLOW THE M.O.A OF $\frac{1}{8}$ " ON A $\frac{3}{8}$ " WOUND (SEE DIAGRAM ATTACHED)

(SUPPORTING DOCUMENTS FOLLOW)

NUMBERED - III - 1-3, 3A, 4, 5, 12-16 + ISSUES PG

SECTION III-1

1) Three witnesses testified at trial that they saw me shoot the deceased. Two said that I was facing him. One said "toe to toe", face to face, about three feet away. One said an arm's length. The the third said about 3-4' away and that he was backing away with arms out hands turned up. The prosecutor demonstrated showing that he was facing me.

2) Defense counsel said that it was self-defense and the arms out was in preparation for the victim to try and kick me. This was the ONLY evidence ever presented in support of this theory.

3) This section shows what was stipulated away by counsel and the prosecution. The trajectory of the bullet was totally suppressed.

*SEE SCHEMATIC DRAWING, TO SCALE, SHOWING TRAJECTORY
TO BE IMPOSSIBLE/IMPLAUSIBLE. ~~THIS~~ PAGE, THIS SECTION
LAST*

EYE WITNESSESI JEFF ADAMS - (REFERING TO DEFENDANT & DECEASED)

A. "JUST STANDING TOE-TO-TOE WITH HIM BASICALLY" (TR. at A-11, LINE 15,

Q. "WERE THEY FACE TO FACE?" (" " " - LINE 16)

A. "YES" (" " " - LINE 17)

DEFENDANT - A. "REACHED TO THE BACK OF HIS TROUSERS AND PULLED OUT" (TR-AT A-11, 12)
A SILVER-PLATED REVOLVER WITH A BLACK HANDLE.MR. BERLIN: -- THAT THE WITNESS HAS HIS ARMS OUTWARD AND (TR - A-12, LINE 18)
PALMS FACING UPWARDS.

(WITNESS WAS DEMONSTRATING HOW DECEASED WAS STANDING)

Q. ... APPROXIMATELY HOW MANY FEET WOULD HE HAVE BEEN
FROM THE DEFENDANT AT THAT TIME? (TR AT A-12)

A. "OH MAYBE THREE." (TR at A-13)

A. "... ACTUALLY HE STARTED TO TROT AND HE THREW
THE REVOLVER UP IN THE AIR. (TR AT A-13)CROSS EXAMINATIONWITHOUT POINT - (TR AT A-17, 18, 19)ALSO: 1) AT TRIAL MR. ADAMS TESTIFIED THAT I CALLED THE
DECEASED "M FEAR" - TR - at A-11

2) ON POLICE REPORTS IT WAS "SONOFABITCH" (SEE EXHIBIT-26)

3) WHEN ASST. ST. ATTORNEY SAID THAT DEFENDANT STATED "... YOU'RE GOING
TO DIE" MR. NICHOLS (P/D) CORRECTED HIM ~~BY~~ OBJECTING

STATING "THAT WAS NOT HIS TESTIMONY. HIS TESTIMONY WAS,

"DO YOU WANT TO DIE, MOTHER ~~FEAR~~?" (TR AT B-32)WHOSE SIDE WAS ~~THE~~

G. NICHOLS (P/D) ON?

III-3

E-26

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICE

DATE OF ORIG. CASE REPORT DATE LAST REVISED

OFFENSE CLASSIFICATION—LAST PREVIOUS REPORT VICTIM'S NAME AS SHOWN ON CASE REPORT

BEAT UNIT ASS

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations including: interview memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes, and any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

(2) ADAMS, JEREMY m/w/34 (21 yrs. 5 mos) Single
17915 S. WENTWORTH Lansing, Illinois
Tel # (708) 474-0275 - Wk # 619 322-3533
Employed @ Stone-Line Pizza (Cook Lodge)
(CENTEL) Shelbyville, Ind.
SS # 303-72-2658

I BELIEVE THIS WAS
ADDED TO COVER-UP
WRONG GUN

HOW COULD HE SEE THAT
GUN HAD A BLACK HANDLE?
MY HAND (LEE) VS. VERY
SMALL GUN.

- @ Lounge
- playing pool/billiards
- but also pool/billiards court
- heard @ say to Tony
- "DO YOU WANT TO DIE TONIGHT?"
- @ walk towards @
- HANDS OUTSTRETCHED (to show he had NOTHING
IN HIS HANDS)
- @ REPEATS 4-5 TIMES
"YOU'RE GOING TO DIE - YOU
SON OF A BITCH"
- @ REACHED BEHIND HIS BACK
- JEREMY SAW N/P REVOLVER w/ BLACK HANDLE
IN @'S RIGHT HAND
- @ BROUGHT GUN UP TO THE @'S CHEST
- @ BEGAN TO BACK AWAY

REPORTING OFFICER'S SIGNATURE—STAR NO.

RECEIVED BY SUPERVISOR'S SIGNATURE—STAR NO.

DAY—MO.—YR. TIME

(NEXT PG. SAYS "THEN SHOT HIM PUNT BLANK")

1-342-989

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICE

DATE OF ORIG. CASE REPORT DATE REC'D - IS REPORT

OFFENSE CLASSIFICATION—LAST PREVIOUS REPORT VICTIM'S NAME AS SHOWN ON CASE REPORT

BEAT/UNIT ASSIGNED

Homicide

RODRIGUEZ Anthony

5211

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations including inter-watch memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes and any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

JEREMY ADAMS

- ① FIRED 1 SHOT
- AT ① "POINT-BLANK" IN CHEST
- ⑤ FALLS
- EVERYONE SCREAMING
- ① TURNS BACKS AWAY FOR ABOUT 7 STEPS
- AS HE GOT TO THE END OF THE SNOW FENCE
- HE BEGAN TO FRET AWAY TOWARDS THE GRAVE ROAD.
- ④ NOW DROPPED DOWN
- ① OUT OF SIGHT.
- ④ HEARD 5 MORE SHOTS
- SAW ⑤ ON GROUND - SHOT

REPORTING OFFICER'S SIGNATURE—STAR NO.

RECEIVED BY: SUPERVISOR'S SIGNATURE—STAR NO.

DAY—MO.—YR. TIME

Anthony Brownfield

[Signature] #2163

4 AUG 93 0320

LPI 140-X

THIS IS
THE JUDGE'S
ASSIGNMENT

1 distorted -- that perspective is distorted, nor do I
2 know why the defense would claim that turns this into
3 self defense or provocation. After the fight, two men
4 arguing, 30 feet away, "Do you want to die, mother
5 fucker or mother," words from the defendant's mouth,
6 which would indicate the defendant's mental state;
7 that he reached into the back of his trousers, pulled
8 out a gun.

9 That according to the testimony of Mr.
10 Jeffrey Adams the victim put up his hands, palms up,
11 demonstrating in the courtroom he put his hands up
12 palms up showing he had nothing in his hands, went two
13 steps backward. The victim retreated.

14 That the defendant then shot him in the
15 chest at point blank range, turned and went away,
16 threw the gun in the area of Brandy Morrisson who
17 could have some bias in this case because of her
18 friendliness with the -- so to speak with the victim
19 in the case. Given that bias, her testimony simply
20 doesn't embellish anything but corroborates Mr. Adams
21 that the defendant -- she talked about the Defendant
22 Tony grabbed the defendant and rubbed his face in the
23 gravel and he drop kicked him and a fight had happened
24 prior to the shooting.

EYE WITNESSES

(III-5)

II. STAN WELICZKO

THIS TESTIMONY
IS DIFFERENT THAN
HIS STATEMENT
WHERE: "HE FIRST
HEARD A SHOT,
& LOOKED UP,"
SEE STATEMENT
NEXT PG.

NOTE: THE
JUDGE SAID
STAN W. WAS
THE MOST
CREDIBLE

SEE TR AT B35,36

Q. WHEN WAS THE NEXT TIME THAT YOU THEN SAW THE DEFENDANT,
JAN NEWELL? _____ (TR at A-42)

A. WHEN HE CAME UP --- CAME WALKING THROUGH THE SNOW
FENCE AND WALKED UP TO TONY AND PULLED A GUN OUT
AND SHOT HIM. _____ (TR AT A-42)

Q. HOW LONG AFTER THE INITIAL FIGHT

A. I WOULD SAY HALF HOUR TO 45 MINUTES --- (" " " ")

Q. DID YOU SEE WHAT TONY WAS DOING WHEN THE DEFENDANT
PULLED OUT A GUN AND SHOT HIM. _____ (TR AT A-43)

MR. SEALIN. THE WITNESS HAS HIS ARMS EXTENDED OUTWARD WITH
HIS HANDS UP. _____ (TR AT A-44)

Q. ... HOW MANY FEET FROM TONY ... --- (" " " ")

A. I'D SAY **THREE, FOUR FEET.** --- (" " " ")

CROSS-EXAMINATION - MR. GEORGE NICHOLS

~~Q.~~ Q. BUT YOU NOTICED WHERE IT WAS?

A. - I WENT OVER THERE, YES, AND I LOOKED WHERE THE GUN
WAS AT.

Q. - AND THE GUN WAS ABOUT 40' AWAY FROM TR AT A-51
WHERE THE BODY OF JAN NEWELL WAS, IS THAT RIGHT?

A. - YES.

III. GEORGE MILLER

Q. AND HOW FAR WAS TONY FROM THE DEFENDANT WHEN
WHEN DEFENDANT SHOT HIM. _____ (TR AT A-57)

A. NOT MUCH MORE THAN A ARMS LENGTH --- (" " " ")

Q. WAS HE FACING THE DEFENDANT AT THAT POINT --- (" " " ")

A. YEAH. --- (" " " ")

CROSS-EXAMINATION

ONLY ABOUT TIME ELEMENT

III: 13

1 A. Yes.

2 Q. And to his hands?

3 A. Yes.

4 MR. NICHOLS: If I may have a moment, Judge.

5 THE COURT: Yes.

6 MR. NICHOLS: Judge, I have no further
7 questions.

8 THE COURT: Anything further?

9 MR. BERLIN: No.

10 THE COURT: Thank you.

11 MR. BERLIN: Thank you, your Honor.

12 THE COURT: State?

13 MR. BERLIN: Judge, at this time the parties would
14 proceed by way of stipulation. It will be stipulated
15 between the defendant, Jan Newell, through his
16 attorney and the State that if Dr. Barry Lipschultz
17 were called to testify he would testify that he is
18 employed by the Office of the Cook County Medical
19 Examiner.

20 He would be qualified as an expert in
21 the field of forensic pathology. He would testify
22 that on July 29, 1993, he performed an autopsy on the
23 body of Anthony Rodriguez. He would identify People's
24 Exhibit Number One as a photograph of that same

TII-19

1 Anthony Rodriguez.

2 He would testify that he performed both
3 an external and an internal examination. His external
4 examination would reveal that Anthony Rodriguez was --
5 appeared to be the stated aged of 28 years old. His
6 height was five feet nine inches and he weighed a
7 hundred ninety-five pounds.

8 His examination also revealed a gun shot
9 wound on the right chest 20 inches from the top of the
10 head and four inches to the right of midline. The
11 course of the wound was from front to back and from
12 right to left, and the doctor would testify that he
13 recovered a medium caliber lead bullet from beneath
14 the skin of the left back.

15 Doctor Lifschultz would testify that in
16 his opinion based upon a reasonable degree of
17 scientific and medical certainty is that Anthony
18 Rodriguez died as a result of a gun shot wound to the
19 chest.

20 As part of the stipulation, Judge, the
21 parties would also stipulate that if Nancy Chen,
22 C-h-e-n, were called to testify she would testify that
23 she is employed by Office of the Medical Examiner as a
24 toxicology, and she performed certain tests on fluid

III-14

OFFICE OF THE MEDICAL EXAMINER
COUNTY OF COOK, ILLINOIS

REPORT OF POSTMORTEM EXAMINATION

NAME Anthony Rodriguez CASE NO. 581 of July, 1993
AGE 26 RACE White SEX Male DATE OF DEATH July 28, 1993
ADDRESS OF DECEDENT 13943 Manistee DATE EXAMINED July 29, 1993
CITY & STATE Burnham, Illinois EXAMINED BY Barry Lifschultz, M.D.

EXTERNAL EXAMINATION:

The body is that of a White male appearing the stated age of 28 years. The height is 5 feet 9 inches. The weight 195 pounds. Rigor is present to a moderate degree in all joints. Livor is present on the posterior dependent portions of the body.

The body is received unclothed. The body is accompanied by a cut away black shirt, blue shorts and white gym shoes.

The hair is brown, straight and medium length. The eyes are closed. The irides brown and the conjunctiva are not congested. A black mustache is present. The teeth are natural and in good repair. The chest is symmetrical. The abdomen is mildly scaphoid. The genitals are those of a normal uncircumcised male. The fingernails are trimmed and clean. The bottoms of the feet are clean. The toenails are trimmed and clean. On the left chest there is a sutured incision 15 inches. On the lateral aspect of the upper portion of the right arm there is a pictorial tattoo. On the right wrist there is a hospital bracelet. The palms of the hands are inked. The back is without special note.

EVIDENCE OF INJURY:

1. On the right chest 20 inches from the top of the head and 4 inches to the right of the midline, there is a gunshot wound of entrance measuring $3/8$ inch x $3/8$ inch with a margin of abrasion measuring $1/8$ inch from 7 o'clock to 11 o'clock. The course of the wound perforates the skin, the subcutaneous tissues, the anterior thoracic wall, the right lung, the left lung, the major blood vessels of the right and left lung, and finally, 14 inches from the top of the head and 4 inches to the left of the midline, a medium caliber lead bullet is recovered from beneath the skin of the left back. The course of the wound is from front to back and right to left.

III-15

Anthony Rodriguez
#581 July 1993

Page 3

INTERNAL EXAMINATION: (Continued)

MUSCULOSKELETAL SYSTEM: There are no fractures of the ribs or long bones. The muscles show no evidence of disease.

CENTRAL NERVOUS SYSTEM: The scalp is reflected. There is no subgaleal hemorrhage. The cranial cavity is entered. There is no subdural, epidural or subarachnoid hemorrhage. The gyri of the brain are unremarkable. The brain is serially sectioned. No pathologic changes are noted in the cerebrum, cerebellum, pons, midbrain or medulla. There are no skull fractures. The spinal cord and vertebral column are intact. The weight of the brain is 1310 grams.

ANATOMIC DIAGNOSIS:

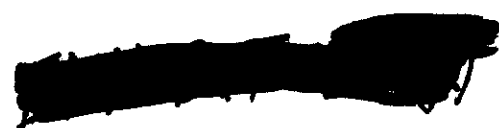
1. Gunshot wound of chest.
2. Bilateral hemothorax.
3. Evidence of therapy. *Q*

OPINION:

This 28 year old White male, ANTHONY RODRIGUEZ, died as a result of a gunshot wound of the chest. *Q*

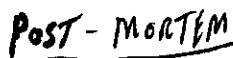

Barry E. Schultz, M.D.
Deputy Medical Examiner

BL:k1b
9/30/93



SCALE - $\frac{1}{16} = 1 \text{ in.}$

III-16



(M.O.A) MARGIN OF ABRASION $\frac{1}{8}$ " - 7 TO 11 O'CLOCK - BULLET HOLE $\frac{3}{8}$ " \times $\frac{3}{8}$ "

**THESE ISSUES AND THIS EVIDENCE WAS/WERE NEVER
INVESTIGATED OR PRESENTED IN COURT:**

1) Witnesses testified that they heard one shot from defendants gun. The weapon the prosecution alleged to be the murder weapon had been fired twice , ie., two expended cartridges were found in the gun. What happened to the second bullet?

2) The fatal bullet was not able to be related to any specific weapon. The post-mortem report stated that the bullet passed through soft tissue. It did not strike any bones and moved in a straight line.

How did the bullet become so damaged that it could not be identified with the alleged murder weapon?

a) Possibility # 1 -- it came from another weapon

2 -- the bullet hit something and was
deflected into the deceased

Defendant's left arm has evidence (scar) of a bullet wound. Defendant's severe arm wound was assessed as a gunshot wound. The police report and emergency room listed it as through and through. After striking and fracturing defendant's arm the bullet could have struck the deceased.

*(THE BULLET WOULD HAVE MY
DNA ON IT.)*

NONE OF THIS WAS INVESTIGATED

There is so much uninvestigated tangible evidence available which would have altered the outcome that its apparent that there was total lack of adversarial testing in my case.

All that is required is that the facts get before an impartial court.

BULLET PATH - FROM POST MORTEM REPORT

GROUND F - COUNSEL GROUND F & G ARE GROUPED TOGETHER
GROUND F - A FAILED TO INTRODUCE THE FIREARMS EVIDENCE

REPORT SHOWING THAT THE FATAL BULLET WAS FIRED FROM A SMITH & WESSON GUN AND NOT NEWELL'S GUN WHICH WAS AN IVER-JOHNSON, ALTERNATIVELY, THAT IF COUNSEL DID NOT HAVE THIS REPORT IT WOULD BE A BRADY VIOLATION AND WOULD CAUSE SEVERE PREJUDICE TO NEWELL AND PREVENT ADVERSARIAL TESTING OF THE CASE, THAT THIS EVIDENCE WAS INCLUDED IN NEWELL'S POST-CONVICTION AND THE 2-1401 (RELIEF FROM FINAL JUDGEMENT) AS EXHIBITS, FAILED TO SHOW 2ND GUN, ESR RESULTS, FITNESS EVALUATION.

GROUND G - COUNSEL
GROUND G - A FAILED TO PROTECT NEWELL'S RIGHT TO COUNSEL IN
 NOT PREPARING HIM FOR THE FITNESS EVALUATION WHERE THE STATE KNEW THAT NEWELL WAS NAIVE TO THE CRIMINAL SYSTEM BUT SOLICITED EVIDENCE OF WHETHER NEWELL HAD A GUN, WHERE WAS IT, WHAT KIND, ETC. WITHOUT COUNSEL BEING PRESENT, THE STATE KNEW THAT A S+W .38 CAL GUN HAD BEEN RECOVERED AT THE CRIME SCENE AND NOT THE IVER-JOHNSON, BUT PICTURED THE IVER-JOHNSON IN COURT WHEN THEY KNEW IT COULDN'T BE THE MURDER WEAPON. THIS WAS EVIDENTARY MANIPULATION BY THE STATE

(SUPPORTING DOCUMENTS FOLLOW)

NUMBERED - 1-15 WITH XNUM PER. BETWEEN 9 & 10

J. NEWELL - K-50566
CASE No. 93 CR 19978

EVIDENCE NEVER INTRODUCED IN COURT

V-1

SECTION I

1) Shows two different weapons placed in inventory and two kinds of bullets fired. One weapon was suppressed and never brought into court.

2) Neither weapon could be identified as the fatal weapon.

3) There were no fingerprints lifted from the alleged murder weapon. (Exhibit ~~3~~)

4) The gunshot residue tests were administered to both me and deceased (why?). Both were inconclusive.

5) At trial ~~and~~ witnesses testified that after I shot the deceased I turned and as I was leaving thru the gun on the ground. (What happened to the prints?) and (What happened to the gunshot residue?).

NOTE: ^{IN} THE "GUN" WAS 35' WEST OF (SEE ^{DIAGRAM ~~3~~} MAP)

BUT THE ~~TECH~~ TECHNICIANS SAID IT WAS A
(S&W) SMITH & WESSON, WITH NO NUMBER, ~~RECOVERED~~ STAINLESS STEEL (RECOVERED)

LATER: THE ALLEGED MURDER WEAPON WAS CHANGED TO A
IVER-JOHNSON, WITH A SERIAL NO. (~~RECOVERED~~) THAT GUN
WAS PICTURED IN COURT AS STATE'S EXHIBIT #3 (TR AT A-17)

THIS WAS AFTER THE FITNESS EVALUATION AND I TOLD
THEM MY GUN WAS AN IVER-JOHNSON W/ A SERIAL #

BUT THE SCHEMATIC OF THE CRIME SCENE ONLY INDICATES
ONE GUN FOUND

OFFICIAL USE ONLY		CHARGE REPORT		OFFENSE/INVEST PRIMARY CLASSIFICATION		SECONDARY CLASSIFICATION	
CHICAGO POLICE		Homicide		MURDER		MURDER	
1. ADDRESS OF OCCURRENCE		2. TYPE OF LOCATION		3. TYPE OF LOCATION		4. TYPE OF LOCATION	
1340 E. 13th St		Riverside Lounge		Riverside Lounge		Riverside Lounge	
5. ADDRESS OF OCCURRENCE		6. TYPE OF LOCATION		7. TYPE OF LOCATION		8. TYPE OF LOCATION	
1340 E. 13th St		Riverside Lounge		Riverside Lounge		Riverside Lounge	
9. TYPE OF LOCATION		10. TYPE OF LOCATION		11. TYPE OF LOCATION		12. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
13. TYPE OF LOCATION		14. TYPE OF LOCATION		15. TYPE OF LOCATION		16. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
17. TYPE OF LOCATION		18. TYPE OF LOCATION		19. TYPE OF LOCATION		20. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
21. TYPE OF LOCATION		22. TYPE OF LOCATION		23. TYPE OF LOCATION		24. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
25. TYPE OF LOCATION		26. TYPE OF LOCATION		27. TYPE OF LOCATION		28. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
29. TYPE OF LOCATION		30. TYPE OF LOCATION		31. TYPE OF LOCATION		32. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
33. TYPE OF LOCATION		34. TYPE OF LOCATION		35. TYPE OF LOCATION		36. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
37. TYPE OF LOCATION		38. TYPE OF LOCATION		39. TYPE OF LOCATION		40. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
41. TYPE OF LOCATION		42. TYPE OF LOCATION		43. TYPE OF LOCATION		44. TYPE OF LOCATION	
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57. TYPE OF LOCATION		58. TYPE OF LOCATION		59. TYPE OF LOCATION		60. TYPE OF LOCATION	
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61. TYPE OF LOCATION		62. TYPE OF LOCATION		63. TYPE OF LOCATION		64. TYPE OF LOCATION	
Riverside Lounge		Riverside Lounge		Riverside Lounge		Riverside Lounge	
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77. TYPE OF LOCATION		78. TYPE OF LOCATION		79. TYPE OF LOCATION		80. TYPE OF LOCATION	
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81. TYPE OF LOCATION		82. TYPE OF LOCATION		83. TYPE OF LOCATION		84. TYPE OF LOCATION	
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PREPARED BY	SIGNATURE	STATION	TOTAL HOURS WORKED	DURATION OF SIGNATURE	BUILDING

THE EMPLOYEE IDENTIFICATION NUMBER IS _____

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICE

(V-4)

DATE OF ORIG. CASE REPORT DATE OF THIS REPORT

OFFENSE CLASSIFICATION - LAST PREVIOUS REPORT VICTIM'S NAME AS SHOWN ON CASE REPORT

Homicide

Rodriguez Dalton

28 Jul 93 28 Jul 93
BEAT/UNIT ASS. 5211

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations including: inter-witness memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes, any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

RD 2488
HERP

1 FACP 5340PG 1448
D-432999
K/R Wheel

BOAT IL 2774 GC

Dept of
CONV

94 Buster H1-MAN
4 + 100K BKVIA

BUCKET
HOLE

9602 - P MORRAN 7718

R BRINKIE 3623

3 rounds was

2-E + pen!

5 S. S. S.

50 W NO NUM 13

X 342 989

OFFICER'S SIGNATURE - STAR NO.

UNIT 2001

RECEIVED BY SUPERVISOR'S SIGNATURE - STAR NO.

5143

DAY-MO.-YR. TIME

4 Aug 93 10300

FORENSIC INSTITUTE

MEDICAL EXAMINER CASE REPORT COOK COUNTY

CASE NO:

581 JUL '93

DECEASED <i>Anthony Rodriguez</i>	AGE <i>38</i>	SEX <i>M</i>	RACE <i>W(H)</i>	ADDRESS (UNKNOWN) <i>13943 Minister</i>
DOB: <i>4/10/65</i>	SSN: <i>(B-5)</i>	ZIP: <i>60631</i> APT: <i></i>		
CLASSIFICATION: Gunshot wounds to the chest				TYPE OF INVESTIGATION <i>Burnham</i>
ADDRESS OF OCCURENCE <i>13600 So. Calhoun Ave. Chicago, Il.</i>				SCENE: <i></i> TELEPHONE: <i>XXXX</i> F.H.: <i></i> HOSP: <i></i>
TIME/DATE FOUND <i>0425 hrs. 28 July 93</i>				TYPE OF PREMISES WHERE FOUND <i>Parking lot</i>
PERSON DISCOVERING DECEASED <i>Citizen</i>				RELATIONSHIP <i>N/A</i>
PERSON INTERVIEWED <i>Det. Bernatek</i>				Assigned Detective <i>Area 2 V.C. Unit</i>
PRONOUNCEMENT: DATE: <i>28 July 93</i> TIME: <i>0521 hrs.</i>				PHYSICIAN: <i>Dr. Allen</i>
POLICE NOTIFIED DATE: <i>28 July 93</i> TIME: <i>0425 hrs.</i>				HOSPITAL: <i>Christ</i>
INSTITUTE NOTIFIED DATE: <i>28 July 93</i> TIME: <i>0635 hrs.</i>		ARRIVAL DATE: <i>28 July 93</i> TIME: <i>0720 hrs.</i>		CLOSED DATE: <i>28 July 93</i> TIME: <i>0750 hrs.</i>

Telephone investigation:

Gunshot wounds to the chest.

NARRATIVE: DESCRIBE CIRCUMSTANCES SURROUNDING DEATH-PHYSICAL EVIDENCE, ETC.

According to Det. Bernatek, Chicago P. D., on 28 July 93, at about 0425 hrs., the subject was the apparent victim of gunshot wounds to the chest after he had been shot during an argument with another unknown white male. The incident took place in a parking lot at 13600 So. Calhoun Ave.. Subject was transported from the scene by Chicago F.D. ambulance #25 to Christ hospital where he expired in the emergency room and was pronounced by Dr. Allen at 0521 hrs. The remains were ordered to the Institute.

Det. Bernatek said that Chicago P.D. crime lab technicians recovered a Smith & Wesson five shot revolver, blue steel with a two inch barrel at the scene. The cylinder contained two expended cartridge cases and three live cartridges. The weapon was placed in police inventory.

The offender, an unknown white male is also in Christ hospital with gunshot wounds, he also had been struck by a motorcycle. He is listed as being in critical condition. Charges are pending further police investigation.

REPORTING INVESTIGATOR

SUPERVISING SIGNATURE

SEAL NO'S: *N O*

SUMMER - 1995

FITNESS EVALUATION (V-6)

PSYCHOLOGIST SAID "YOU CERTAINLY HAD ENOUGH PROVOCATION"
(HOW DID HE KNOW?)

PSYCHIATRIST "WITHOUT COUNSEL PRESENT"

DO YOU OWN A GUN? WHAT KIND, COLOR, CALIBER, HOW
MANY SHOTS DID IT HOLD, MAKE, SERIAL #, WAS HANDLE
BLACK OR BROWN? ~~WAS~~ WAS IT AN IVER-JOHNSON
I TOLD HER THAT I DID HAVE ONE THAT I KEPT IN MY CAR
AND IT MIGHT BE AN IVER-JOHNSON, 5-SHOT, CHROME, ETC.

QUEST. WHY WOULD THAT INFORMATION BE SOLICITED DURING
A FITNESS EVALUATION? (WITHOUT COUNSEL) - I HAD NEVER
BEEN INVOLVED IN THE CRIMINAL SYSTEM AND ANSWERED HONESTLY

ALSO: I NEVER HAD FIRED THAT GUN & DIDN'T EVEN
KNOW IF IT WORKED. I STATED THIS AT SENTENCING,
BUT IT WAS LEFT OFF OF THE TRANSCRIPTS I WILL
TAKE A POLYGRAPH TO THAT.

THEY WANTED ME TO THINK MY GUN WAS THE MURDER
WEAPON WHEN ANOTHER GUN (S&W, 5-SHOT .38 CAL. 2" BARREL
WITH NO SERIAL #) WAS THE RECOVERED WEAPON, BY CRIME
SCENE TECHNICIANS (SEE THEIR REPORT)

THE TECHNICIANS ONLY RECOVERED - 1 - GUN (THE S&W) AT
THE CRIME SCENE. ALSO:

THE FATAL BULLET COULD NOT BE RELATED
TO A SPECIFIC WEAPON ALTHOUGH IT WAS LABELED .38 S W ???
(SEE EXHIBIT 16)

FILED

28 July 93

V X 342 989

NOTICE TO PROPERTY OWNER
OR CLAIMANT

☐ PROPERTY RELEASE ORDER
(CPD-34.554) REQUIRED

RETURN TO THE POLICE STATION WHEN
YOUR PROPERTY WAS TAKEN FROM YOU
GIVE THIS COPY TO THE DESK OFFICER
CHARGE FOR FORMS AND INSTRUCTION
NECESSARY FOR THE RETURN OF YOUR
PROPERTY

UPON OFFICIAL NOTIFICATION THAT
INVENTORIED PROPERTY IS AVAILABLE
FOR RELEASE, THE SUBJECT OWNER OF
CLAIMANT MUST PICK UP THE PROPERTY
WITHIN 30 DAYS OF NOTIFICATION OR THE
PROPERTY WILL BE LEGALLY DISPOSED OF
ACCORDING TO THE DIRECTION OF THE
LAW

NOTICE TO FINDER
(GIVE OR MAIL THIS COPY TO FINDER)

OBTAIN UNCLAIMED PROPERTY AFTER 30
DAYS AND BEFORE 45 DAYS FROM THE
DATE OF INVENTORY

YOU MUST OBTAIN A PROPERTY RELEASE
ORDER FROM THE RECOVERING UNIT.
PRESENT THE PROPERTY RELEASE ORDER
TO THE EVIDENCE & RECOVERED
PROPERTY SECTION.

2650 SOUTH CALIFORNIA, ROOM 8804
8:00 A.M. TO 4:00 P.M.
MONDAY THROUGH FRIDAY
(CLOSED HOLIDAYS)

CALL 747-6224 OR 747-6225 TO ARRANGE
TO PICK UP BULKY ITEMS.

ARRESTEE INFORMATION

SEIZURE WITHOUT SEARCH WARRANT -
(Ill. Rev. Stat. Chap. 38, Sec. 108-2)
1725 ILCS 5/108-2)
GIVE THIS COPY TO ARRESTEE. IF NOT
ACCEPTED, ATTACH TO COPY 5

SEIZURE WITH SEARCH WARRANT -
(Ill. Rev. Stat. Chap. 38, Sec. 108-10)
1725 ILCS 5/108-10)
ATTACH THIS COPY TO SEARCH
WARRANT.

LINE NO

QUANTITY

DESCRIPTION OF PROPERTY

U.S.C. ONLY

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COPY 4-GIVE OR SEND TO FINDER, ARRESTEE OR OWNER

Page #2

29 July
RD#X-342

DETECTIVE DIVISION
AREA TWO VIOLENT CRIMES
HOMICIDE/1ST DEGREE MURDER
VICTIM: RODRIGUEZ, ANTHONY

INJURIES:

RODRIGUEZ-single GSW right upper chest, above and approx. 1 inch left of nipple (fatal)

NEWELL-GSW left fore arm, T&T
GSW enter center back exit below left clavical
bruises to face, hands, arms and both knees.

TAKEN TO:

both victims transported to Christ Hospital.

Rodriguez by CFD #25

Newell by CFD #51

*PICTURED IN COURT
WEAPON: THIS IS A DIFFERENT GUN
FROM THE ONE RECOVERED BY
CRIME SCENE TECHNIANS,*

Iver Johnson, .38 cal., chrome, 1 1/2 inch
bbl., 5 shot revolver, Sr#19938 (recovered)

LOCATION:

13600 S. Calhoun Riverside Lounge
outside patio and parking lot

F/DATE/TIME:

Wednesday, 28 JULY 93, 0415 hrs.

WEATHER/LIGHTING:

clear, 75 deg./good artificial lighting

WEAPON/MOTIVE:

shot victim / after fight over females

NOTIFIED BY:

RODRIGUEZ was identified from polaroid by Robert Rodriguez (father) and Theresa (sister) Formal identification to be made at M.E.

EVIDENCE:

INV#1198251-Iver Johnson, .38 cal., chrome, 1 1/2 inch bbl., 5 shot, revolver ser#19938.
two .38 S&W discharged cartridge cases
three .38 S&W live cartridges taken from above weapon

INV#1198252-one AA GSR #93-142 -Newell
one AA GSR #93-143 -Rodriguez

photos as described in Crime lab evidence report.

(-45-)

SE NO.

M.E. Turner assigned case 581 JULY 93
Victim pronounced by DR. Allen 0521Hrs.
Christ Hospital

CRIME LABORATORY REPORT

CRIME LABORATORY DIVISION/CHICAGO POLICE

INCIDENT/OFFENSE CLASSIFICATION

HOMICIDE / MURDER - (I-9)

IUCR OFF CODE

0110

RD NO

X342999

VICTIM'S NAME

RODRIGUEZ, ANTHONY

DISTRICT AREA

304

DATE OF THIS REPORT

06-06-93

DEFENDANT'S NAME

LABORATORY UNIT

FIREARMS

SUMMARY FINDINGS - FIREARMS EVIDENCE

The following fired evidence was submitted to the Crime Laboratory for examination, classification and evaluation relative to RD X342999:

INVENTORY NUMBER	DATE RECEIVED	CLASS CHARACTERISTICS	SUITABLE FOR COMPARISON	PLACED IN OPEN CASES
1202467	29-07-93	38SPL 5R	POSSIBLY	NO
FATAL BULLET → 1194015	30-07-93	38SW ??	NO	NO

None of the submitted fired evidence has been identified with a specific weapon. All evidence that has not been placed in the open case file has been forwarded to the Evidence and Recovered Property Unit.

QUESTIONS!

HOW CAN A FIRED BULLET BE LABELED "38SW"???

DOES THAT MEAN THAT IT WAS FIRED FROM A S&W GUN?

IF SO THEN MY GUN DIDN'T FIRE THE FATAL BULLET AND I AM INNOCENT

↑
CENTRAL QUESTION: DOES CLASS CHARACTERISTICS REFER TO A TYPE OF GUN OR BULLET?

-46-

PAGE 1 OF 1 PAGES

COPIES REQUIRED (NO. & RECIPIENT)

2 TO A2 VC

REPORTING MEMBER (PRINT NAME)

Robert J. Smith

SIGNATURE

Robert J. Smith

RD NO

X342999

.....With Regard to identification of the bullet in question, the expert testified that the basis for firearms identification is the similarity in the in the RepRoduction of the class 'and individual' characteristics. He identified various class chaRacter-istics common to the bullets involved herein, and he explained that class characteristics are characteristics common to certain types of weapons.....

People v. Richardson, 123 11.Dec. 908,
914, 528 N.E. 2d 612 (11.1988)

In the CRIME LABORATORY REPORT --titled Summary Findings-
Firearms Evidence under Class Characteristics

Fatal Bullet38SW??

Shows excuLpatory evidence of actual/factual innocence as the fatal bullet was fired from a Smith&Wesson revolver and not the Iver-Johnson, which was identified as the murder weapon. and pictured in court as Exhibit #3 for the State. This caused severe prejudice to defendant.

The Iver-Johnson was the gun which was identified by the defendant, during his fitness evaluation, as his. This was without counsel being present.

Question?-- Was it a Brady violation for the State to introduce a picture of a gun, as the alleged murder weapon, when they knew that it didn't fire the fatal bullet, even though they solicited that it only " looked like it" ?

CRIME LABORATORY REPORT
CRIME LABORATORY DIVISION/CHICAGO POLICE

Case 06-10819 Document 1 Filed 06/30/2008 Page 77 of 94

V-10

INCIDENT/OFFENSE CLASSIFICATION HOMICIDE / MURDER		INCR OFF CODE 0110	RD NO K342989
VICTIM'S NAME RODRIGUEZ, ANTHONY		DISTRICT AREA C41 2	DATE OF THIS REPORT 20 AUG 1993
DEFENDANT'S NAME		LABORATORY UNIT MICROSCOPY/TRACE UNIT	

GUN SHOT RESIDUE ANALYSIS

On 08-07-93 TECH P. MORAN 7718 of the Crime Laboratory

Mobile Unit submitted the following exhibit and control for analysis:

Exhibit W-1: Four (4) handwabs identified as having
been recovered from RODRIGUEZ, ANTHONY

Exhibit W-1 and control were analyzed using Atomic Absorption
Spectrophotometry for the elements lead, barium, and antimony
which are components of most gunshot residue mixtures.

The test results of kit 93-143 do not allow the analyst to
form an opinion regarding a firearm discharge.

Exhibit W-1, Inventory Number 1198252, will be forwarded to the
Evidence and Recovered Property Section.

Page 1 of 1

EXTRA COPIES REQUIRED (NO. & RECIPIENT)

1 To Unit Area 2 VC
DET.ARBATAITIS#20315

REPORTING MEMBER (PRINT NAME)

SCOTT A ROCHOWICZ

SIGNATURE

Scott A Rochowicz

RD NO
X-342989

CRIME LABORATORY REPORT
CRIME LABORATORY DIVISION/CHICAGO POLICE

Document 1 Filed 06/30/2008 Page 78 of 94

E-10

V-11

INCIDENT/OFFENSE CLASSIFICATION HOMICIDE / MURDER		I-UCR OFF. CODE 0110	RD NO 8342989
VICTIM'S NAME MORAN, ANTHONY		DISTRICT AREA 04 12	DATE OF THIS REPORT 10 10 1993
DEFENDANT'S NAME		LABORATORY UNIT MICROSCOPY/TRACE UNIT	

GUN SHOT RESIDUE ANALYSIS

On 09-07-93 TECH P. MORAN 7718 of the Crime Laboratory mobile unit submitted the following exhibit and control for analysis:

Exhibit Q-1: Four (4) handwads identified as having been recovered from REVELL, JAY

Exhibit Q-1 and control were analyzed using Atomic Absorption Spectrophotometry for the elements lead, barium, and antimony which are components of most gunshot residue mixtures.

The test results of kit 93-142 do not allow the analyst to form an opinion regarding a firearm discharge.

Exhibit Q-1, Inventory Number 1198252, will be forwarded to the Evidence and Recovered Property Section.

Page 1 of 1

EXTRA COPIES REQUIRED (NO. & RECIPIENT)

1 To Unit Area 2 KC
DET. ARRATAITIS#20315

REPORTING MEMBER (PRINT NAME)

SCOTT A ROCHOWICZ

SIGNATURE

Scott A Rochowicz

RD NO

X-342989

Homicide

7110

N 342985

ADDRESS OF SERVICE

13600 S. Calhoun

VICTIM'S NAME

K-12

SEX-RACE-AGE

AREA-DIST-BEAT

2 04

ASSIGNMENT TYPE

CS

REQUESTED BY

0432

DATE RECEIVED - TIME

23 Jul 93-0450

UNIT

PHOTOGRAPHY

a O/A gravel area at 13600 S. Calhoun

b O/A Boat (IL 27760)
C/U damage, left side

c ID Unk #2

C/U WOUNDS - chest.

d O/A weapon on ground
C/U

e ID Unk #1.

C/U wound, right side chest

H

f O/A Ford (lic/ RD 2489)

g O/A tattoo right arm

FINGERPRINTS

ELIM PRINTS

☐ YES ☐ NO

IN CUSTODY

☐ YES ☐ NO

NAME (LAST FIRST)

SEX-RACE DOB

CB NO

A NO

MED NEG LIFT

LOCATION FOUND

FN

MED NEG LIFT

LOCATION FOUND

W five shot revolver SR# 19938 (PH)

Fingerprints photographed by John J. Miller #15765

1 - 4"x5" neg 26 Jul 93 JK

POSSIBLE SUSPECT INFORMATION

☐ MALE ☐ FEMALE☐ ADULT ☐ JUVENILE

RACE

TOTAL NO OF LIFTS

DATE OF TRANSMITTAL

☐ PALMS ☐ IMPRESSIONS☐ FINGERPRINTS

SUITABLE FOR COMPUTER

☐ YES ☐ NO

PRINTS SUITABLE FOR COMPARISON

☐ YES ☒ NO

INITIALS OF EXAMINER

DATE

VEH YEAR MAKE & MODEL

Ford Taurus

COLOR

black

STATE LICENSE NO

RD 2489

VIN

1FACPS340D0144R05

PHYSICAL EVIDENCE

PROP INVENT NO - UNIT

DESCRIPTION & LOCATION

INITIALS

1198251 177

one Iver Johnson 5 shot revolver, 1 1/2"bb1, chrome, SR# 19938;
two 38 S&W discharged cartridge cases and three 38 S&W cartridges
taken from the revolver at 13600 S. Calhoun.PH
EA

1198252 177

one AA GSR# 33-142 administered to Unk #1
one AA GSR# 93-143 administered to Unk #2
at Christ Community Hospital ER.

TAILS OF CASE

At 13600 S. Calhoun R/T met Det. Bernatek who related that during a disturbance unknown pers #1 (deceased) shot unknown person #2 (critical with GSWs to left chest, left arm and back). Person #1 was then shot by an as yet unknown third person. R/T photographed views depicting conditions of the scene and surrounding area, searched for and collected the noted physical evidence. Vehicles were examined that appeared to have been damaged in the gunfire exchange with negative results. At Christ Hospital, R/T examined and photographed views depicting the condition and wounds of both parties. AA GSR examinations were administered to both persons at the request of Rt 5212. Polaroid photos were taken and turned over to Rt 5212.

STIGATING OFFICER'S NAME

STAR NO

UNIT

Arbataitis #20315 Bernatek #20016 5212/522

BEAT OFFICER'S NAME

Busin

STAR NO

3004

UNIT

0432/004

REPORTING TECHNICIAN - PRINT LAST NAME - FIRST - STAR NO - UNIT

Patrick Moran #7713

Robert Baikie #3623

177

DATE ARRIVED

28 July 93 - 0510

TIME

TIME COMPLETED

1000

OFFICER'S SIGNATURE

3-1-93

DATE

28 July 93

APPROVING SUPERVISOR (PRINT NAME) - STAR NO

-47-

SUPERVISOR'S SIGNATURE

LOCATION OF WEAPON

(V-13)

OFFICER A. BUSIN

A. PEOPLE WERE YELLING AND SCREAMING, AND THEN THEY WERE ALSO POINTING THAT THE WEAPON WAS JUST ABOUT 30 TO 35 FEET WEST IN THE PARKING LOT AREA FROM ~~THE~~

MR. NEWELL — (TR AT B-7)

I WENT THERE WITH MY PARTNER, PLACED HER THERE TO PROTECT THE GUN — (TR AT B-7)

Q. ... A PEOPLES EXHIBIT #3 AND ASK IF YOU RECOGNIZE WHAT IT IS?
THE WITNESS:

A. YES. THIS WAS THE HANDGUN THAT WAS POINTED OUT TO US BY SEVERAL PEOPLE STATING THAT THIS WAS A WEAPON THAT MR. NEWELL USED. — (TR AT B-9)

MR. NICHOLS: OBJECTION, JUDGE (TR AT B-9)

THE COURT: OVERRULED (TR AT B-9)

MR. BERLIN: Q. OFFICER, SO WE ARE CLEAR IS THAT THE GUN ... THAT WAS APPROX. 35 FEET ... TO THE WEST OF JIM NEWELL

THE WITNESS: A. - YES.

[NOTE: PEOPLES EXHIBIT 3 WAS A PICTURE OF THE IVER-JOHNSON GUN WHICH WAS MY GUN NOT THE WEAPON FOUND

Q. AND WERE THE CRIME LAB OFFICERS, WERE THEY CALLED OUT TO THE SCENE AS WELL? — (TR AT B-9)

A. YES

Q. DID YOU SEE THEM DO ANYTHING WITH THAT GUN?

A. THEY PICKED IT UP, PROCESSED IT, INVENTORIED WHICH EVER WAY THEY DO IT. — (TR AT B-9)

WITNESS JEFF ADAMS

A. VICTIM FELL THE SHOOTER ... STARTED TO WALK AWAY ... AND HE THREW THE REVOLVER UP IN THE AIR ... TOWARDS THE STREET LIGHT ... — (TR AT A-13)

Q. SIR, I'M NEXT GOING TO SHOW YOU ... PEOPLES EXHIBIT NUMBER 3, FOR IDENTIFICATION, AND ASK IF YOU RECOGNIZE WHAT'S SHOWN

LOCATION OF WEAPON (CONT)

IN THAT PHOTOGRAPH? (TR AT A-17) (V-14)

A. IT'S A REVOLVER

Q. AND IS THAT THE TYPE OF REVOLVER THAT YOU SAW IN DEFENDANT'S HAND?

A. ABSOLUTELY

Q. DOES IT LOOK LIKE THE SAME REVOLVER?

A. IT CERTAINLY DOES. (TR AT A-17)

WITNESS BRANDY MORRISON

Q. THE DEFENDANT?

A. YEAH, HE COMES AROUND MY CAR AND HE THROWS THIS WEAPON AWAY

A. ... HE JUST FLUNG HIS LEFT ARM UP. - (TR AT A-28)

WITNESS STAN WELICZKO

Q. NOW YOU LATER FOUND THE GUN THAT HAD BEEN THROWN AWAY?

Q. ... AND THE GUN WAS ABOUT 40 FEET AWAY ...

A. YES. — (TR AT A-51)

QUESTIONS: IF THE WITNESSES SAW ME THROW THE IVER-JOHNSON HOW DID CRIME TECHS FIND A SMITH & WESSON GUN? I BELIEVE THAT THE S&W WAS SUPPRESSED & WHEN THEY FOUND OUT THAT MY GUN WAS THE IVER-JOHNSON, THE PROSECUTION ALTERED REPORTS AND THE WITNESSES WEREN'T TOLD THAT ANOTHER GUN WAS FOUND.

MR. NICHOLS (MY PUBLIC DEFENDER) NEVER MENTIONED ANYTHING ABOUT GUNS OR FORENSICS TO ME! NOR CHALLENGED THIS INFORMATION.

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICE

IV-15

DATE OF ORIG. CASE REPORT DATE OF THIS
DAY MONTH YEAR DAY MONTH YEAR

128 Jul 93 28 Jul 93

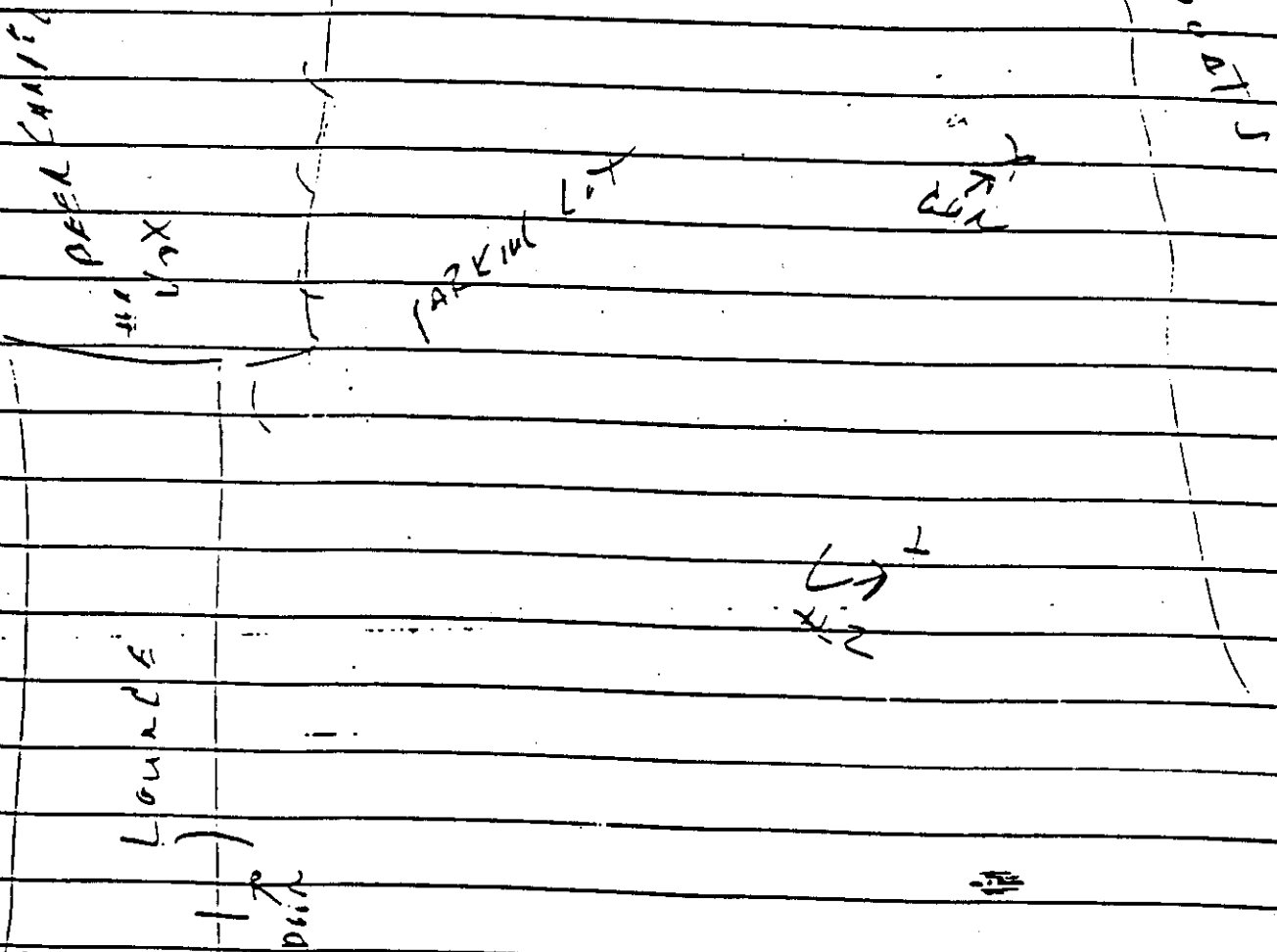
OFFENSE CLASSIFICATION—LAST PREVIOUS REPORT VICTIM'S NAME AS SHOWN ON CASE REPORT

Domestic Violence Robert J. Carter

SECTION/UNIT ASS
52

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations including: inter-watch memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes, and any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

13600 COLH. RIVERSIDE LOUNGE
RIVER



-38-

REPORTING OFFICER'S SIGNATURE—STAR NO. 20315 RECEIVED BY SUPERVISOR'S SIGNATURE—STAR NO. 2163 DAY—MO.—YR. TIME 4 AUG 93 1030

6862989

GROUND - IV - THAT PERJURED TESTIMONY WAS GIVEN BY STAN WELICH (EYEWITNESS), THE WITNESS DEEMED MOST CREDIBLE BY THE JUDGE WHERE^{IN} HIS STATEMENT HE STATED HE DID NOT SEE THE SHOOTING, BUT AT TRIAL TESTIFIED AS TO ACTUALLY SEEING NEWELL SHOOT THE DECEASED AND THAT THIS WAS MORE THAN AN INCONSISTENCY.

GROUND ^V~~IV~~ - INEFFECTIVE ASSISTANCE OF COUNSEL BY:

- 1) PUBLIC DEFENDER G. NICHOLS PRE-TRIAL, TRIAL, SENTENCING
(NEVER BROUGHT UP INTOXICATION AS MITIGATION)
- 2) TODD SHANKER ON DIRECT APPEAL
- 3) LORI MOSBY - ON APPEAL OF POST-CONVICTION

(SUPPORTING DOCUMENTS FOLLOW)

NUMBERED

III-6-11, II-12

III-6

E-P

GENERAL PROGRESS REPORT
DETECTIVE DIVISION/CHICAGO POLICE

DATE OF ORIG. CASE REPORT DATE OF THIS REPORT

OFFENSE CLASSIFICATION LAST PREVIOUS REPORT VICTIM'S NAME AS SHOWN ON CASE REPORT BEAT/UNIT ASSIGN

Homicide P. Dargatzis Anthony 28 Jul 93 29 Jul 93 5211

This form is designed for recording handwritten notes and memoranda which are made during the conduct of investigations, including: inter-watch memoranda (handwritten or typewritten), witness and suspect interview notes, on-scene canvas notes, and any handwritten personal notes made by detectives during the field investigation of violent crimes which are used to prepare official Department case reports.

ASA DURKIN AT A/R 1900 HRS.

STAN(2) GIRLS FIGHTING BLOND +
BRUNET

outside of Bar.

~~TONY KICKS JAN~~TONY + JAN ARE BREAKING
UP THE GIRLS

(TONY KICKS JAN IN CHEST)

AFTER JAN GETS UP HE
WALKS AWAY TOWARDS THE RICKLATER HE HEARS A SHOT
+ SEES TONY FALL + SEES
JAN WITH A GUN

(OVER)

REPORTING OFFICER'S SIGNATURE-STAR NO. RECEIVED BY SUPERVISOR'S SIGNATURE-STAR NO. DAY-MO.-YR. TIME
R. Dargatzis 20315 S. J. E. 2163 4 AUG 93 0300

NOTE: EYEWITNESS RICK RODRIGUEZ WAS NEVER INVESTIGATED BY ASST. P/D G. NICHOLS. HE GAVE AN ENTIRELY DIFFERENT VERSION OF EVENTS THAN THE STATE'S EYEWITNESSES (SECT. IV PG. 4), WHERE ~~ANOTHER~~ ANOTHER PERSON (GEARY) WAS ON A BIKE FIRING AT THE SCENE. (IV-4) (IV-6)

IN STAN WELICZO'S STATEMENT TO ASST. STS. ATTY. JAMES DURKIN, WELICZO BEGINS TO RELATE THE INCIDENT OF SOMEONE ON A ——— IE ... SAW THE GUY ON A ... BUT IS IMMEDIATELY CORRECTED BY MR. DURKIN, SEE STATEMENT OF STAN WELICZO (III-8 MIDDLE OF PG.)

- STAN WELICZO WAS THE WITNESS MOST RELIED ON BY JUDGE AS MOST RELIABLE - (III-9 OR TR-B-35)

E-5

THIS WAS THE ONLY TIME I SAW THE SHOOTING AND WAS THE WITNESS THE JURY REPLIED ON AS MOST CREDIBLE. SEE TRIAL TRANSCRIPTS AT B35,36.

STATEMENT OF SWU

Stan Webiczko

Taken 7-29-93 At 8:15 P.M.

At 22 Violent Crimes

Present ASA Durkin

DET Arbataitis 20315

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This statement taken regarding the fatal shooting of Tony Rodriguez which occurred on July 28, 1993 at 13600 S. Calhoun Chicago at 0400 hours.

I understand I have the right to remain silent and that anything I say can be used against me in a court of law. I understand that I have the right to talk to a lawyer and have him present with me during questioning, and if I cannot afford to hire a lawyer one will be appointed by the court to represent me before any questioning. Understanding these rights, I wish to give a statement.

Stan Webiczko

After being advised and stating that he understood that James Durkin was an assistant states attorney a lawyer and prosecutor and not Joseph Majka nor Jan Newell's lawyer. STAN Webiczko agreed to the following statement in summary. He states he graduated from Fenger High School in 1970. He states he can read and write English. He states he does not know Jan Newell or Joseph Majka. He states that he arrived at the Riverside Lounge with Les Hector and Mary and left. He states he was August 1st that evening in Hammond with Les Hector then met Mary and left at D's Lounge prior to arriving at the Riverside Lounge. He states that after arriving at the Riverside, approximately fifteen minutes later, he saw two girls fight in the parking lot. One James Durkin ASA Stan Webiczko

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girl was a blonde with blue jeans, long black boots and a black T-shirt. The other woman was a brunette heavy set with shorts. He states he that two males a middle-aged hispanic and an older ^{By the way, I saw} middle aged man with brown glasses and long shorts interviewed ^{by the way} with the girls. He states he next saw the hispanic drop kick the guy with the brown glasses and shorts. He states the guy with the glasses hit the ground and walk towards the river. He states the girls began to fight again. He states about 45 minutes to an hour later he was sitting on a picnic bench watching volleyball. He states the hispanic male was sitting about 10-15 feet from him. He states he he heard a gun shot, looked up and saw the ^{by the way} ~~guy~~ hispanic guy fall down and the guy with the brown glasses and shorts with a gun in his hand in front of the hispanic male. He states the guy with the gun walked through a hole in the fence. He states he went to help the guy who was shot and about a minute later he ^{by the way} saw in his late twenties shoot a gun about 5-6 shots in a northeast ^{by the way from the parking lot} direction. He states he never saw that man before and he was not the same man who shot the hispanic man earlier. He states that he saw the guy who shot the hispanic man laying on the dirt in an east direction the same direction the male in the parking lot was aiming his gun. He ^{by the way} states the guy in the dirt with blood on his head and shoulder.

Set by [Signature] with W. W. [Signature]
 [Signature]
 John D. [Signature]

(12)

1 She heard the shots. She couldn't
2 testify -- if she was going to embellish anything she
3 certainly had the ability to embellish. She didn't.
4 She only heard the shooting, didn't see it. The most
5 objective testimony in the case is from Stanley
6 however you pronounce his last name.

7 MR. BERLIN: Wolichko.

8 THE COURT: The Inland Steel worker who had
9 never been to the bar, hasn't been back in the bar
10 since according to him. He's an independent witness
11 who has no bias on either side, an eyewitness who
12 comes upon the scene. He testifies he sees the
13 initial fight.

14 Tony is dropped kicked by the defendant
15 and -- not drop kicked. The Defendant Jan and knocks
16 him down. Then he testifies he saw nothing happen.
17 For about a half hour nothing happened. During that
18 time he sees the defendant within about twenty minutes
19 later. He testifies he sees the defendant walk up to
20 Tony, pull out the gun and roughly between a period of
21 twenty minutes and half hour maybe as long as
22 forty-five minutes certainly a substantial cooling-off
23 period in which the defendant leaves, gets his gun.

24 Oh, he has the gun all right. I don't

THIS PG.
IS JUDGE'S
CONCLUSION

DIFFERS
FROM
STATEMENT

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1 know. Makes up his mind, comes back to the scene. He
2 has a gun and confronts a man who puts his palms up
3 and steps backwards. Had there been a fight before,
4 if he had shot him in the course of the original fight
5 and shot the unarmed man during the course of that
6 original confrontation I would have agreed with the
7 defense there would be an argument for sudden and
8 intense passion and perhaps a finding of murder two in
9 this case.

10 Mr. Wolichko testifies the victim put up
11 his arms and had nothing in his hands. The next
12 witness, George Miller, also testified he saw the
13 defendant come out of his pocket a with a gun and
14 shoot the victim. The victim had nothing in his
15 hands.

16 There appears to be nothing in this
17 record to corroborate any sudden and intense passion.
18 Indeed what the record bears out is someone who gets
19 in a confrontation, leaves, makes a decision, the
20 decision is indicated by his actions, his words, "Do
21 you want to die, mother; or do you want to die, mother
22 fucker?"

23 There's no other clearer intentions of
24 someone of their own words or actions here. The

AGAIN BASES
ON THIS
WITNESS
PSYCHIC

1 MR. NICHOLS: Judge, we have heard testimony from
2 witnesses who viewed this event from twenty feet away,
3 from inside the bar looking out at the event, and they
4 describe to you a shooting that happened while the
5 defendant and the decedent in this case were toe to
6 toe, were three feet away from each other.

7 From their vantage point, Judge, it
8 appeared that there was nothing in the decedent's
9 hand. The decedent did not appear to be threatening
10 to them, but they were in a different position than
11 the defendant was because the defendant being closer
12 to him having just been dropped kicked by him.

13 You remember that two of the witnesses
14 testified that the decedent in this case had just drop
15 kicked the defendant to the ground and had rubbed his
16 face in the gravel. The defendant was in quite a
17 different position. The defendant was in fear for his
18 life. Judge, and Judge, I think that you can only find
19 the defendant not guilty at this time. He was acting
20 only in self-defense.

21 THE COURT: Motion for a directed finding will be
22 denied.

23 MR. NICHOLS: Judge, I will call Mr. John
24 Pivorunias.

I. GEORGE NICHOLS (ASST. P/D AT TRIAL) - CONCEDED GUILT

JUDGE, HIS ACT WAS AN ACT OF SELF-DEFENSE AND WAS A RESULT OF A SUDDEN AND INTENSE PASSION. JUDGE, IN THIS CASE ALTHOUGH A MURDER FINDING MAY BE WARRANTED, THAT FINDING SHOULD ONLY BE MURDER IN THE SECOND DEGREE. (TR AT B-31)

[FAILURE TO PRESENT FORENSIC EVIDENCE OF REASONABLE DOUBT / FACTUAL INNOCENCE / MITIGATION / ADVERSARIAL TESTING]

ALSO: "JUDGE, IT'S CLEAR IN THIS CASE, JUDGE, THAT MY CLIENT ACTED BOTH IN SELF-DEFENSE AND AS WELL AS A RESULT OF PROVOCATION" (TR AT B-30)

II. TODD SHANKER (ASST. P/D ON DIRECT APPEAL)

NEVER CONSULTED WITH DEFENDANT. DEFENDANT RECEIVED LETTER SHOWING THAT HE WAS APPOINTED ON FRIDAY AND HIS BRIEF WAS FILED THE FOLLOWING MONDAY. DID NOT ADDRESS PRO SE SUPPLEMENTAL BRIEF WHICH HAD BEEN GRANTED BY COURT. - ONLY RAISED EXCESSIVE SENTENCE ISSUE.

III. LORI MOSBY (ASST. APPELLATE DEFENDER ON POST-CONVICTION APPEAL)

~~RAISED ONLY ONE ISSUE - PROMISE OF 2ND DEGREE WITH A BENCH TRIAL~~ - I NOTIFIED HER BY MAIL OF OTHER ISSUES
~~7~~ ~~SEE [REDACTED] [REDACTED] OF [REDACTED] TO [REDACTED]~~

WAS THE GIST OF A MERITORIOUS ISSUE
 FAILED TO RAISE INADEQUATE ASSISTANCE OF COUNSEL
 WITH AVAILABLE EVIDENCE

(C) Ground three _____
Supporting facts: _____

(D) Ground four _____
Supporting facts: _____

2. Have all grounds raised in this petition been presented to the highest court having jurisdiction?

YES () NO (X)

3. If you answered "NO" to question (2), state briefly what grounds were not so presented and why not:

THE DENIAL OF JURY TRIAL WITH A FALSE PROMISE OF 2ND DEGREE,
WITH A BENCH TRIAL, WAS EXHAUSTED. INEFFECTIVE ASSISTANCE OF APPELLATE
COUNSELS PREVENTED ALL CLAIMS FROM EXHAUSTION. INCLUDED IS "NEW" EVIDENCE
REQUIRING REVIEW UNDER THE "FUNDAMENTAL MISCARriage OF JUSTICE"
STANDARD. THE CENTRAL CORE OF CLAIMS WAS INCLUDED AS EXHIBITS
BUT NOT ARTICULATED DUE TO BEING PRO-SE & WITHOUT LEGAL EXPECTARE.

• ~~SE~~

PART IV - REPRESENTATION

Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (A) At preliminary hearing GEORGE NICHOLS - ASST. PUBLIC DEFENDER
- (B) At arraignment and plea " " " " "
- (C) At trial " " " " "
- (D) At sentencing " " " " "
- (E) On appeal TODD SHANKER - " " "
- (F) In any post-conviction proceeding LORI MUSBY - ASST. APPELLATE DEFENDER ON APPEAL
OF POST-CONVICTION DENIAL
- (G) Other (state): DEBRA SEATON (CHICAGO) COURT APPOINTED ON APPEAL OF
MOTION TO BE HEARD CONSTRUED AS A SUCCESSIVE 2-1401
PETITION (RELIEF FROM JUDGEMENT)

PART V - FUTURE SENTENCE

Do you have any future sentence to serve following the sentence imposed by this conviction?

YES () NO (✓)

SHOBHA MAHADEV (ASST. APPELLATE DEFENDER) ON APPEAL
OF ORIGINAL 2-1401 PETITION

Name and location of the court which imposed the sentence: _____

Date and length of sentence to be served in the future _____

WHEREFORE, petitioner prays that the court grant petitioner all relief to which he may be entitled in this proceeding.

Signed on: JUNE 17, 2008
(Date)

Signature of attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct.

J. Newell
(Signature of petitioner)

K-50566
(I.D. Number)

DIXON CORR. CNTR - 2600 N. BRINTON
(Address)
DIXON, IL 61021

STATE OF ILLINOIS

SS

~~COURT REPORTER~~

LEE COUNTY

IN THE

UNITED STATES DISTRICT COURT NORTHERN
DISTRICT OF ILLINOIS - WESTERN DIVISION

JAN NEWELL

Respondent

vs.

NEDRA CHANDLER - WARDEN

Case No. _____

20TH CLERKS OFFICE - PRISONER CORRESP. NOTICE OF FILING
CHIEF CRIMINAL APPEALS DIVISION

To: U.S. DISTRICT CT. - EASTWINDY: OFFICE OF ATTY. GENERAL

219 S. DEARBORN ST.

100 W. RANDOLPH - 12TH FL.

CHICAGO, IL 60604

CHICAGO, IL 60601

1 original & 2 copies

1 copy(ies)

_____ copy(ies)

PLEASE TAKE NOTE that on the 19TH day of JUNE, 2008, I have
filed, through the U.S. Mail, the above named parties, the below listed documents
(number of copies & originals filed are listed below the addresses of the parties):

1. PETITION FOR WRIT OF HABEAS CORPUS
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

AFFIDAVIT OF SERVICE

I, JAN NEWELL, being first duly sworn on oath, depose and aver
that he/she has caused the above stated documents in the above stated amounts, to be
served upon the above listed parties by placing the same in the U.S. Mail Box on Housing
Unit # HCU located at Dixon Correctional Center in Dixon, IL for delivery as 1st Class
Mail.

s/s

Name: JAN NEWELL

IDOC Reg. # K-50566

Subscribed and sworn to before me this

19TH day of June, 2008.

Carole S. O'Neal

Notary Public

